

MONTANA LEGISLATIVE HISTORY

Chapter 651 19 87

Bill H 754 S _____ Original bill & history ✓ c

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) 2-19 _____ c

Hearing Date(s) 4-8 _____ c

2-23 _____ c

Date out NA _____ c

House Rules 3-26 _____ c

_____ c

_____ c

Date Out 3-26 _____ c

_____ c

Conference Committee 4-23

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

The Law Library does not have conference
committee minutes for this ⁴⁻²³ day of bill.

The Historical Society may have them.

HOUSE FINAL STATUS

	SENATE		
3/26	CONFERENCE COMMITTEE APPOINTED		
4/08	CONFERENCE COMMITTEE DISSOLVED	50	0
	HOUSE		
4/09	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT		
4/20	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	97	0
4/21	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	98	0
	SENATE		
4/08	FREE CONFERENCE COMMITTEE APPOINTED		
4/15	FREE CONFERENCE COMMITTEE REPORT		
4/16	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	50	0
4/17	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	49	0
4/22	SIGNED BY SPEAKER		
4/23	SIGNED BY PRESIDENT		
4/23	TRANSMITTED TO GOVERNOR		
4/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 632 EFFECTIVE DATE: 10/01/87		
HB 753	INTRODUCED BY RAMIREZ, ET AL. APPOINTMENT OF PUBLIC SERVICE COMMISSIONERS		
2/14	INTRODUCED		
2/14	REFERRED TO STATE ADMINISTRATION		
2/18	HEARING		
2/19	COMMITTEE REPORT--BILL NOT PASSED		
2/20	ADVERSE COMMITTEE REPORT ADOPTED	70	20
HB 754	INTRODUCED BY BRADLEY, ET AL. PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES AND ESTABLISHES PRIORITY BASINS BY REQUEST OF WATER POLICY COMMITTEE		
2/14	INTRODUCED		
2/14	REFERRED TO JUDICIARY		
2/14	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/20	FISCAL NOTE RECEIVED		
2/23	COMMITTEE REPORT--BILL PASSED		
2/25	REREFERRED TO RULES		
3/26	HEARING		
3/27	COMMITTEE REPORT--BILL PASSED AS AMENDED		
3/31	2ND READING PASSED	50	34
4/01	3RD READING PASSED	55	40
	TRANSMITTED TO SENATE		
4/03	REFERRED TO JUDICIARY		
4/08	HEARING		
4/10	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
4/14	2ND READING CONCURRED	50	0
4/14	3RD READING CONCURRED	35	15
	RETURNED TO HOUSE WITH AMENDMENTS		
4/16	2ND READING AMENDMENTS CONCURRED	85	12
4/17	TAKEN FROM 3RD READING AND PLACED ON 2ND READING		

HOUSE FINAL STATUS

4/20	2ND READING AMENDMENTS NOT CONCURRED	97	1
4/20	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	86	9
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	85	13

SENATE

4/21	FREE CONFERENCE COMMITTEE APPOINTED		
4/23	FREE CONFERENCE COMMITTEE REPORT		
4/23	2ND READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	32	16
4/23	3RD READING FREE CONFERENCE COMMITTEE REPORT ADOPTED	30	19

4/29 SIGNED BY SPEAKER
5/01 SIGNED BY PRESIDENT

5/01 TRANSMITTED TO GOVERNOR
5/11 SIGNED BY GOVERNOR
CHAPTER NUMBER 651 EFFECTIVE DATE: 7/01/87

HB 755 INTRODUCED BY COBB, ET AL.
PERMANENTLY ALLOW EMPLOYEE INCENTIVE AWARDS UP TO
\$3,000 MAXIMUM

2/14	INTRODUCED		
2/14	REFERRED TO STATE ADMINISTRATION		
2/19	COMMITTEE REPORT--BILL PASSED		
2/20	HEARING		
2/21	2ND READING PASSED	93	0
2/23	3RD READING PASSED	97	1

	TRANSMITTED TO SENATE		
3/02	REFERRED TO STATE ADMINISTRATION		
3/10	HEARING		
3/10	COMMITTEE REPORT--BILL CONCURRED		
3/13	2ND READING CONCURRED	50	0
3/16	3RD READING CONCURRED	50	0

RETURNED TO HOUSE
3/19 SIGNED BY SPEAKER
3/19 SIGNED BY PRESIDENT

3/20 TRANSMITTED TO GOVERNOR
3/24 SIGNED BY GOVERNOR
CHAPTER NUMBER 201 EFFECTIVE DATE: 3/24/87

HB 756 INTRODUCED BY COHEN, ET AL.
PROVIDING AN INDIVIDUAL INCOME TAX CREDIT AGAINST
PROPERTY TAXES PAID

2/14	INTRODUCED		
2/14	REFERRED TO TAXATION		
2/14	FISCAL NOTE REQUESTED		
2/20	FISCAL NOTE RECEIVED		
3/06	HEARING		
3/12	TABLED IN COMMITTEE		

HB 757 INTRODUCED BY WHALEN
CHANGE DATE FROM WHICH PREJUDGMENT INTEREST RUNS IN
A TORT ACTION

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY

COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
740		2/19/87	2/19/87			2/19/87					
737		2/19/87	2/19/87	2/19/87							
748		2/19/87	2/23/87	2/23/87							
754		2/19/87	2/23/87	2/23/87							
757		2/19/87	2/23/87	tabled							
758		2/19/87	2/23/87	tabled							
761		2/19/87		2/21/87							
790		2/20/87				2/21/87					
800		2/20/87				2/20/87					
805		2/20/87				2/20/87					
824		2/20/87	2/20/87	tabled							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

1 House BILL NO. 754
2 INTRODUCED BY Bradley Jensen Spaulth
3 BY REQUEST OF THE WATER POLICY COMMITTEE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE WATER
6 JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY
9 BASINS; AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND
10 ANALYSIS OF CLAIMS WITHIN DECREES ISSUED BY THE WATER
11 COURTS; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,
12 3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, AND 85-2-701,
13 MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16 Section 1. Section 3-1-1001, MCA, is amended to read:

17 "3-1-1001. Creation, composition, and function of
18 commission. (1) A judicial nomination commission for the
19 state is created. Its function is to provide the governor
20 with a list of candidates for appointment to fill any
21 vacancy on the supreme court or any district court and to
22 provide the chief justice of the supreme court with a list
23 of candidates for appointment to fill any term or vacancy
24 for the chief water judge or a water judge pursuant to
25 3-7-201 and 3-7-221. The commission shall be composed of

1 seven members as follows:

2 (a) four lay members who are neither judges nor
3 attorneys, active or retired, who reside in different
4 geographical areas of the state, and each of whom is
5 representative of a different industry, business, or
6 profession, whether actively so engaged or retired, who
7 shall be appointed by the governor;

8 (b) two attorneys actively engaged in the practice of
9 law, one from each congressional district, who shall be
10 appointed by the supreme court;

11 (c) one district judge elected by the district judges
12 under an elective procedure initiated and conducted by the
13 supreme court and certified to such election by the chief
14 justice of the supreme court. The election shall be
15 considered an appointment for the purposes of this part.

16 (2) Appointments provided for in this section shall be
17 made within 30 days of the completion of the preceding
18 terms."

19 Section 2. Section 3-1-1006, MCA, is amended to read:

20 "3-1-1006. Secretary -- election and duties. (1) The
21 commission shall elect one of its members to serve as the
22 secretary and upon such election shall notify the governor
23 of the name and mailing address of such person.

24 (2) The secretary shall keep a record of all
25 proceedings by the commission and act as corresponding

1 secretary with the governor's office and with the office of
2 the chief justice of the supreme court."

3 Section 3. Section 3-1-1008, MCA, is amended to read:

4 "3-1-1008. Quorum. Four members of the commission
5 shall constitute a quorum for the transaction of business.
6 To submit a name to the governor or to the chief justice of
7 the supreme court, there must be a concurrence of at least
8 four members."

9 Section 4. Section 3-1-1010, MCA, is amended to read:

10 "3-1-1010. ~~51st~~ Lists submitted to governor and chief
11 justice -- report on proceedings. (1) The commission shall
12 meet forthwith after a vacancy occurs on the supreme court
13 or district court and submit to the governor within 30 days
14 from the date of the vacancy a list of not less than three
15 or more than five nominees for appointment.

16 (2) The commission shall meet to prepare and submit to
17 the chief justice of the supreme court a list of not less
18 than three or more than five nominees for appointment to
19 fill any term or vacancy for the chief water judge or a
20 water judge. The list must be submitted at least 30 days
21 prior to a new term or within 30 days from the date of a
22 vacancy.

23 (3) The Any list must be accompanied by a written
24 report ~~to the governor~~ indicating the vote on each nominee,
25 the content of the application submitted by each nominee,

1 and the commission's reasons for recommending each nominee
2 for appointment."

3 Section 5. Section 3-1-1011, MCA, is amended to read:

4 "3-1-1011. Governor or chief justice of the supreme
5 court to appoint from list. The governor, or the chief
6 justice of the supreme court for offices described in
7 3-7-201 or 3-7-221, must make an appointment from the list
8 of nominees submitted by the commission."

9 Section 6. Section 3-7-201, MCA, is amended to read:

10 "3-7-201. Designation of water judge. (1) A water
11 judge shall be designated within 30 days after May 11, 1979,
12 for each water division ~~by a majority vote of a committee~~
13 ~~composed of the district judge from each single judge~~
14 ~~judicial district and the chief district judge from each~~
15 ~~multiple judge judicial district, wholly or partly within~~
16 ~~the division. Except as provided in subsection (2) and~~
17 ~~3-7-213, a water judge must be a district judge or retired~~
18 ~~district judge of a judicial district wholly or partly~~
19 ~~within the water division. A water judge shall have the~~
20 qualifications for district court or supreme court judges
21 found in Article VII, section 9, of the Montana
22 constitution.

23 (2) The chief justice of the supreme court shall
24 appoint a water judge as provided in Title 3, chapter 1,
25 part 10.

~~(2)(3)~~ A district-judge-or-retired-district-judge--may sit--as--a water judge may sit in more than one division if requested by the chief justice of the supreme court, the chief water judge, or the water judge of the division in which he is requested to sit.

~~(3)(4)~~ A water judge, when presiding over a water division, presides as district judge in and for each judicial district wholly or partly within the water division."

Section 7. Section 3-7-213, MCA, is amended to read:

"3-7-213. Designation of alternate judge. The water judge may designate ~~any--other--district-judge-or-retired district-judge~~ a district judge, retired district judge, or another water judge to preside in his absence on his behalf as water judge for the immediate enforcement of an existing decree or the immediate granting of extraordinary relief as may be provided for by law upon an allegation of irreparable harm."

Section 8. Section 3-7-221, MCA, is amended to read:

"3-7-221. Appointment of chief water judge -- term of office. (1) The chief justice of the Montana supreme court shall appoint a chief water judge ~~from-among-the-district judges-serving-or-retired-as-of-the-time-of--appointment~~ as provided in Title 3, chapter 1, part 10.

(2) To be eligible for the office of chief water

judge, a person shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana constitution.

~~(2)(3)~~ The term of office of the chief water judge is from the date of initial appointment until June 30, 1985. After June 30, 1985, the term of office is 4 years, subject to continuation of the water divisions by the legislature."

Section 9. Section 85-2-701, MCA, is amended to read:

"85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should

1 make the negotiation of water rights claimed by the federal
 2 government or Indian tribes in or affecting the basins
 3 identified by [section 10] its highest priority."

4 NEW SECTION. Section 10. Process and criteria for
 5 designating priority basins or subbasins. (1) The water
 6 judges and the department, in performing their functions in
 7 the adjudication process, shall give priority to basins or
 8 subbasins designated each biennium by the legislature.
 9 Basins or subbasins must be designated according to the
 10 following criteria:

11 (a) recurring water shortages within the basin or
 12 subbasin have resulted in urgent water rights controversies
 13 that require adjudication to determine relative rights;

14 (b) federal or Indian reserved rights are nearing
 15 determination, either by compact or adjudication, thus
 16 making adjudication of other rights in the basin or subbasin
 17 important for timely issuance of preliminary or final
 18 decrees;

19 (c) the basin or subbasin's location would help ensure
 20 efficient use of department and water court resources; and

21 (d) the adjudication process in the basin or subbasin
 22 is nearing the issuance of a decree.

23 (2) The water judge may designate a basin for priority
 24 adjudication upon petition of 100 or more persons who have
 25 filed claims within the basin, or he may designate a

1 subbasin for priority adjudication upon petition of a
 2 majority of persons who have filed claims within the
 3 subbasin. The basin or subbasin shall receive priority,
 4 however, only if it meets one or more of the criteria in
 5 subsection (1).

6 (3) If adjudication work in one or more of the
 7 priority basins or subbasins has been completed or has been
 8 suspended for good cause, the water judge may select other
 9 basins or subbasins for priority adjudication, based on the
 10 criteria in subsection (1).

11 NEW SECTION. Section 11. Appropriation for sample of
 12 claims within decrees. (1) There is appropriated to the
 13 environmental quality council for use by the water policy
 14 committee \$92,000 from the water development state special
 15 revenue fund for the biennium ending June 30, 1989, to
 16 undertake a random sampling and analysis for accuracy and
 17 consistency of claims in basins that have undergone
 18 adjudication efforts and for which a temporary preliminary,
 19 preliminary, or final decree has been issued. The analysis
 20 must be based on the requirements for final decrees provided
 21 in 85-2-234.

22 (2) The office of the legislative auditor shall assist
 23 the water policy committee in conducting the random sampling
 24 and analysis. The water policy committee may contract with a
 25 qualified consultant to conduct the random sampling and

1 analysis. The analysis must be completed by June 30, 1988,
2 and water policy committee recommendations resulting from
3 the analysis must be submitted to the legislature by January
4 1, 1989.

5 (3) In devising the random sampling and analysis, the
6 water policy committee shall consult with the department of
7 natural resources and conservation and with the Montana
8 water courts.

9 (4) All claimants whose claims are randomly selected
10 for the sampling and analysis shall assist the water policy
11 committee and its consultant in reviewing claims for
12 accuracy and consistency. Assistance provided by a claimant
13 may not involve financial cost to the claimant.

14 (5) The water policy committee and its consultant may
15 enter the property of a claimant to conduct field
16 investigations upon providing written notice to the claimant
17 at least 14 days in advance of the investigation.

18 (6) Information derived from the random sampling and
19 analysis that is specific to an individual claimant must be
20 kept confidential and may not prejudice the final
21 adjudication of that claimant's water rights. However,
22 information derived from the random sampling and analysis
23 may be described in general terms and is public information.

24 NEW SECTION. Section 12. Extension of authority. Any
25 existing authority of the judicial nomination commission and

1 the board of natural resources and conservation to make
2 rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

4 NEW SECTION. Section 13. Codification instruction.
5 Section 10 is intended to be codified as an integral part of
6 Title 85, chapter 2, part 2, and the provisions of Title 85,
7 chapter 2, part 2, apply to section 10.

8 NEW SECTION. Section 14. Effective date. This act is
9 effective July 1, 1987.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB754, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This act would change the Water Judge appointment process to expand the population of eligible candidates and to include a judicial nomination commission process; providing for adjudication by priority basins; authorizing an appropriation for random sampling and analysis of claims within decrees issued by the Water Courts.

ASSUMPTIONS:

1. The effective date would be July 1, 1987.
2. The bill would appropriate \$92,000 to the Environmental Quality Council from the water development state special revenue fund for the biennium.
3. Department of Natural Resources and Conservation (DNRC) would not change its type or schedule adjudication functions; but would change its application to basins with legislatively prioritized designation.
4. There will be no transfer of DNRC office staff or resources.
5. Re-examination of claims within basins under temporary preliminary or preliminary decree will be performed as currently scheduled.
6. Consultation with the DNRC by the Water Policy Committee and/or the contracted consultant will not require extensive research, training or report preparation by the DNRC.
7. No appropriated funds for the DNRC are expected to be used to assist with the random sampling and analysis to determine accuracy and consistency of decrees.
8. No contracting for services to satisfy the purpose of this legislation will be conducted by the DNRC.
9. The DNRC will be reimbursed by the contracted consultant for copies of decrees, indexes and other materials used in their random sampling and analysis.
10. The Montana Reserved Water Rights Compact Commission (RWRCC) will not change the nature or scope of technical and legal analysis required for negotiation of federal reserved water rights claims; however, the RWRCC will focus negotiations on prioritized basins; in accordance with this bill.
11. Utilizing a sample selected during FY88, the Office of the Legislative Auditor would: 1) calculate the sample size; 2) extract the random sample; 3) assist in evaluating the results of the testing; 4) would not be involved in testing the sample; 5) would bill the EQC for costs incurred (estimated cost 407, in the first year); and 6) would deposit the revenue in the Legislative Audit special revenue fund.
12. It is assumed that the terms of all the judges currently serving will not expire in FY88-89 and that none of the current judges will retire during FY88-89.

David L. Hunter

DATE

2/20/87

DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Bradley

DATE

DOROTHY BRADLEY, PRIMARY SPONSOR

Fiscal Note for HB754, as introduced.

HB 754

FISCAL IMPACT:

Expenditures:

	<u>Current Law</u>	<u>FY88</u> <u>Proposed Law</u>	<u>Difference</u>
Personal Services	\$ 0		
Operating	0	\$ 92,000*	\$ 92,000
Grants	\$ 500,000	408,000	(92,000)
TOTAL	\$ 500,000	\$500,000	\$ 0

Funding:

Water Development

State Special	\$ 500,000	\$500,000	\$ 0
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*Biennial appropriation in the first year.

If a judgeship is filled by other than a current sitting judge there will be a fiscal impact.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 19, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 19, 1987, at 7:00 a.m. in Room 312 D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Eudaily who was excused.

EXECUTIVE SESSION:

ACTION ON HOUSE BILL NO. 316:

Rep. Gould moved that HB 316 DO PASS. He moved that a sunset be put on the bill and that a report be presented to the next Legislature. Question was called on the amendment to provide a sunset for the involuntary commitment statute. A voice vote was taken and the motion CARRIED unanimously. Rep. Gould moved that HB 316 DO PASS AS AMENDED. Mr. MacMaster stated that an extension of authority needs to be put on the bill. He pointed out that this is needed because 53-21-106 grants rulemaking authority and Section 102 is amended so the authority needs to be extended to Section 102 as amended. Rep. Gould moved the amendment. Question was called and a voice vote was taken. The motion CARRIED 13-2 with Reps. Hannah and Daily dissenting. Rep. Addy stated that the fiscal note is incorrect with regard to the definition of "mentally ill". He moved to amend page 5, lines 10-15, striking the words "no person". Question was called and a voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Gould moved DO PASS AS AMENDED. Question was called and voice vote was taken. The motion CARRIED unanimously. HB 316 DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 284:

Rep. Darko moved that HB 284 DO PASS. She stated that HB 283 without HB 284 is nothing more than mere language. She moved amendments that ask for the penalties to be softened down to the minimum amount because we have to keep aggravated visitation interference as a felony in order to extradite people from another state. Question was called and voice vote was taken. The motion CARRIED unanimously. (See Amendments Attached). Rep. Darko moved that HB 284 DO PASS AS AMENDED. Rep. Addy moved to amend HB 284 on page 2, line 4 inserting "without the written consent of the custodial

rule on peremptory challenges to make it only one disqualification in a civil action. In the interest of consistency, he urged a do pass recommendation on this bill.

There were no proponents, no opponents and no question.

Rep. Mercer closed the hearing on HJR 21.

HOUSE BILL NO. 754, Rep. Bradley, District No. 79, stated that this bill is requested by The Water Policy Committee. It changes the Water Judge appointment process to expand the population of eligible candidates and it includes a judicial nomination commission process, providing for adjudication by priority basins and authorizing an appropriation for random sampling and analysis of claims within decrees issued by the water courts. She pointed out that the first 2/3 of the bill deals with minor changes of the water judge appointment process. She stated that the qualifications are revised on the level of district court judge and it goes through the judicial commission process. It will then be submitted to the Supreme Court Chief Justice. After the Chief has made a selection, it will then go to a Senate confirmation. She presented a Statement of Intent. (Exhibit A). She explained that page 8 deals with the random sampling of decrees and that this was the committee's effort in listening to all sides of the adjudication issue to come up with some kind of a compromise. The scientific sampling is estimated to cost \$29,000.00 and it will be contracted out.

PROPOSERS:

REP. DENNIS IVERSON stated that he strongly supports the bill and there is a legitimate dispute between the water court and DNRC. This bill does not address this, but it does touch upon the dispute in a way that will make matters better. He urged support for this legislation.

LARRY EASBENDER, Director of the Department of Natural Resources and Conservation, pointed out that the provisions in this legislation do improve the situation by expanding the pool by which judges can be drawn and they are interested in the priority of basins.

OPPOSERS:

ED STEINMETZ, Water Court, Bozeman, stated that the water court is neutral on the sections of the bill dealing with the selection of water judges and prioritization of basins, although there is a financial impact of the selection of water judges provision. They are opposed to the section on random sampling because there has been no showing of

necessity which is sufficient to justify the expenditure of \$92,000.00.

VERN WESTLAKE, Gallatin County Agricultural Preservation Association, stated that he opposed this bill because it proposes legislation that is not needed and cannot be justified at this particular time. He asked that HB 754 be killed. The water court has already demonstrated that it is better able to complete the adjudication process at a lower cost to the taxpayers, and to do so in a shorter length of time. He submitted written testimony. (Exhibit B).

KIM ENKERUD. Montana Association of State Grazing Districts, the Montana Stockgrowers and Montana CattleWomen, opposes section 11, because the random sampling is an unnecessary expense. Written testimony was presented. (Exhibit C).

LORNA FRANK, Montana Farm Bureau, went on record in opposition to section 11.

See Visitors' Register for further opponents.

QUESTIONS (or Discussion) ON HOUSE BILL NO. 754:

Rep. Rapp-Svrcek asked Mr. Steinmetz if his objections to the bill would be lessened if the bill was amended to state that sampling would be done only on final decrees. He answered that it would eliminate part of his objections, but it would not eliminate his concern for correct adjudication. He stated that the courts determine the law not sampling agencies.

Rep. Rapp-Svrcek asked Rep. Bradley if the Department of Fish, Wildlife and Park's objections have been cleared up. She stated that in determining this compromise approach the committee listened to lawyer after lawyer in the state who expressed great concern about the accuracy issue and the committee felt that it would be irresponsible to say they did not know what they were talking about.

Rep. Meyers asked Rep. Bradley how she would feel about an amendment to the random sampling section. She asked him what he had in mind and Rep. Meyers answered that he would eliminate it. She stated that she would oppose that because all parts of the bill are important and she would not want to see the entire bill go down. Rep. Bradley stated that she feels strongly about a random sampling approach and she does not see what we have to lose by getting more information.

Rep. Rapp-Svrcek asked Rep. Bradley how she felt about limiting the random sampling only to final decrees. She

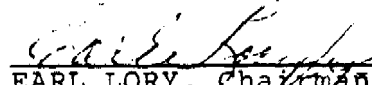
said that she would take the approach as opposed to eliminating this altogether. Rep. Iverson pointed out that the real need to have accuracy is to make sure this stands up in Federal Court and there have been some serious questions raised as to whether it will. The reason that it is important that we take some samples from the beginning on through to the end is that when the Federal Court looks at this they are not going to care if one farmer gets more water than the other but they are concerned about the process. They want to make sure that fairness is applied.

Rep. Lory asked Rep. Bradley if she felt the bill was flawed because there are three subjects in one bill. She answered that the three subjects deal with water. Rep. Lory stated that they are all dealing with water but different subjects and he stated further that they may not move through the rules committee.

Rep. Iverson pointed out that the bill deals with water but addresses the water adjudication process.

Rep. Bradley closed the hearing on HB 754 by stating that this proposal is the best the committee could come up with that would put the question to rest once and for all. She said that she agrees with Mr. Westlake about the need for efficiency in moving through this process. An important thing for private landowners is that once they have their water rights secured, it is secured to them forever. She pointed out that all the bill is asking for is that all the information be put before them. There is not a mandate to take the information and do something with it and there is no reason to be fearful because we have nothing to lose by having more information and everything to gain. She strongly urged support for this legislation.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 1:06 p.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 19, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)			✓
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

Exhibit A
2-19-87
= 754

Statement of Intent
House Bill 754

A statement of intent is provided for this bill because the legislature desires to indicate to the Montana water courts and the department of natural resources and conservation the basins that should receive priority adjudication efforts.

The legislature finds and determines the basins described in I through IX below to be priority basins. The basins are selected according to the criteria in section 10 of this bill and the priority provided for the Milk River basin in 85-2-321. They are listed by the department's field office areas because it is assumed priority basins are needed in each area to ensure efficient use of water court and department staff. The legislature recognizes that deviations from the order of priority provided may be necessary to ensure efficiency in the adjudication process, and that additional priority basins may be added upon petition to and determination by the water judge.

I. Basins in the Billings field office area:

Yellowstone River from Bridger Creek to the Clark's Fork of the
Yellowstone River (43QJ)
Yellowstone River above and including Bridger Creek (43B)
Sweet Grass Creek (43BV)
Stillwater River (43C)
Boulder River tributary of Yellowstone River (43BJ)
Clark's Fork of the Yellowstone River (43D)
Yellowstone River between the Clark's Fork of the Yellowstone River
and the Bighorn River (43Q)

II. Basins in the Bozeman field office area:

Madison River (41F)
Gallatin River (41H)
Shields River (43A)
Ruby River (41C)
Beaverhead River (41B)
Red Rock River (41A)
Big Hole River (41D)

III. Basins in the Glasgow field office area:

Rock Creek tributary of the Milk River (40N)
Frenchman Creek (40L)
Milk River below Whitewater Creek including Porcupine Creek (40O)
Beaver Creek tributary of the Milk River (40M)
Whitewater Creek (40K)
Dry Creek (40D)
Missouri River between the Musselshell River and Fort Peck Dam
(40E)

IV. Basins in the Havre field office area:

Sage Creek (40G)
Milk River between Fresno Reservoir and Whitewater Creek (40J)

Papples Creek (40I)
Willow Creek (41N)
Teton River (41O)
Sun River (41K)

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V. Basins in the Helena field office area:

Dearborn River (41U)
Clark Fork above the Blackfoot River (76G)
Boulder River tributary of the Jefferson River (41E)
Jefferson River (41G)
Missouri River above Holter Dam (41I)

VI. Basins in the Kalispell field office area:

Milk River above Fresno Reservoir (40F)
Big Sandy Creek (40H)
Yaak River (76B)
Fisher River (76C)
Kootenai River (76D)
Clark Fork below Flathead Lake (76N)
South Fork of the Flathead River (76J)
Middle Fork of the Flathead River (76I)
Swan River (76K)
Flathead River above Flathead Lake (76LJ)

VII. Basins in the Lewistown field office area:

Milk River between Fresno Reservoir and Whitewater Creek (40J)
Judith River (41S)
Musselshell River above Roundup (40A)
Musselshell River below Roundup (40C)
Flatwillow Creek including Boxelder Creek (40B)

VIII. Basins in the Miles City field office area:

Beaver Creek tributary of the Little Missouri River (39G)
Yellowstone River between the Tongue River and the Powder River
(42K)
Little Missouri River above Little Beaver Creek (39F)
Rosebud Creek (42A)
Little Beaver Creek (39FJ)
Boxelder Creek (39E)
Yellowstone River below Powder River (42M)

IX. Basins in the Missoula field office area:

Rock Creek tributary of the Clark Fork River (76E)
Flint Creek (76GJ)
Clark Fork between the Blackfoot River and the Flathead River (76M)
Bitterroot River (76H)
Blackfoot River (76F)

House Judiciary Committee:

Chairman Rep. Earl Lory:

Mr. Chairman:

I am Vernon Westlake, representing the Gallatin County Agricultural Preservation Association. For the Record, our organization opposes H.B. 754 because this bill proposes legislation that is not needed and cannot be justified at this particular time.

I am asking this Committee today: How many of the 204,000 water rights claimants are indicating dissatisfaction with the adjudication process under the jurisdiction of the Water Court? I can safely say that a very large percentage want the process completed as quickly as possible and support the Water Court to do so.

H.B. 754 is an attempt by the Department of Natural Resources to obtain jurisdiction over random sampling of water rights and to analyse and verify these claims for errors. I shall explain why I believe this is true.

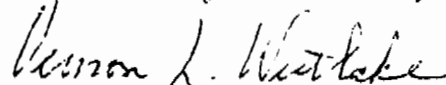
Let us examine Section 11 and Section 12 of the bill. Paragraph 3 of Section 11 specifically states that the Water Policy Committee shall consult with DNRC and with the Water Court. All of Section 12, lines 24 and 25 on page 9 and lines 1, 2 and 3 on page 10, grant authority to DNRC under Montana Administrative Procedure Act, to make the Rules on the subject of the provisions of this Act. This is an end run to gain jurisdiction for verification of pre-1973 Montana water rights. We, in agriculture, adamantly oppose this and recommend restrictions concerning the use of MAPA.

The Montana Supreme Court has not issued a decision at this time, whether or not the DNRC can write guidelines assuming responsibility for verification of water rights.

The Water Court is in place and has completed eight or nine basins, with about one-third of the claims finalized. The Water Court has been upheld by the United States Supreme Court for doing an adequate job and the Montana Supreme Court, in a unanimous opinion, stated that the Water Court is adequate to adjudicate all water rights.

I shall conclude by saying that H.B. 754 should be killed in Committee. The Water Court has already demonstrated that it is better able to complete the adjudication process at a lower cost to the taxpayers and to do so in a shorter length of time.

Respectfully submitted,



Vernon L. Westlake
Chairman, Water Committee
Gallatin Co. APA
3186 Love Lane
Bozeman, Mt. 59715

MONTANA ASSOCIATION OF STATE GRAZING DISTRICTS

420 North California St.

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(406) 442-3420

John Pfaff, President
Dever Enkerud, Vice President
Stuart Doggett, Executive Secretary

Miles City
Glasgow
Helena

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219 87
754
DIRECTORS
Bill Ainsy
Lynn Cornwell
Mark Davies
Joe E. Hart
Jack Hughes
Ismael
Glasgow
Cherokee
Glasgow
Glasgow

HB 754

My name is Kim Enkerud and I am representing the Montana Association of State Grazing Districts, and the Montana Stockgrowers.

Basically, we support ~~this bill except for~~ Section 11 - appropriation for sample of claims within decrees. We feel this random sampling is an unnecessary expense of \$92,000.00

The purpose of the water court is to determine the accuracy and consistency of the claims in subbasins or basins. We feel they have been and will continue to do so to the best of their ability. They do not need a different entity doing the job to which they have been delegated.

Thank you.

VISITORS' REGISTER

COMMITTEE

BILL NO.

754

DATE

Feb. 19, 1987

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
JESS KILGORE	THREE FORKS		X
VERNON L. WEST LAKE	BOZEMAN A PA		X
JAMES BOTTOM LY	DELRIDGE "		X
Paul C. Dillman	HIGH LINE CANAL CO. MANHATTAN		X
Larry J. Jashinski	DNRL		
Tim HAN	DNRC		
Ed Steinmetz	Water Cont, Bozeman		
Lerna Frank	MT. Farm Bureau		X
Bob CORREA	Agriculture Preservation Assoc		X
Kim Enkeard	MT Assoc. State Deery Dist. MT Stockraisers MT Cattlemen		X
Lorents Grosfeld	Sweet Grass Preservation Assn		X Section 11

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

February 23, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on February 23, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was absent.

ACTION ON HOUSE BILL NO. 748: Rep. Giacometto move DO PASS. Question was called and a voice vote was taken. The motion CARRIED unanimously. HB 748 DO PASS.

ACTION ON HOUSE BILL NO. 754: Rep. Giacometto opened discussion but stated he was opposed to the bill. Rep. Addy said he was not there for the hearing on the bill but had heard about the bill and it seemed to be an unusual procedure or an unorthodox way of going about checking the results of a court, but this was a unique court. He felt this was a step in the right direction. Rep. Rapp-Svrcek pointed out that HB 754 was one of the most important bills the committee would consider this session and it must be seriously looked at. He stated it was extremely important that the bill be passed as it was written. Rep. Keller said he did not have any problems with the first part of the bill but he sees that most people are worried about the last part of it. Rep. Mercer said the constitution requires that the legislature set up some kind of procedure for checking into the water rights and this puts the burden on legislators to set up the water rights court. In 1981, the water right court was set up. He felt that the whole system was messed up and he did not see how the bill would solve anything. His biggest concern was the separation of powers since this was not an administrative water court by a judicial branch water court. He stated that this would be a serious violation of the separation of powers to do a secret audit of court opinions. Rep. Rapp-Svrcek did not see that there was a separation of powers and stated that there was no secret audit. The bill presents a way of knowing if the process was working or not. Rep. Cobb said that some of the areas have never had water rights adjudicated. Rep. Lory asked Rep. Mercer what the results would be of an audit if it was found that something was messed up.

Rep. Mercer stated he had no idea how this would be resolved but said that judicial decrees would eventually be quite messed up and he just did not know how it would be undone.

Rep. Lory pointed out that decrees would have to be challenged in court. Rep. Addy commented that the bill would have to go through appropriations and there was enough serious questions that have been raised about it, so, perhaps it should be tabled. Rep. Meyers agreed with Rep. Addy. Rep. Addy moved to TABLE the bill. Question was called and a voice vote was taken on the motion. The motion CARRIED unanimously. HB 754, TABLED.

ACTION ON HOUSE BILL NO. 522: Rep. Hannah moved to TABLE the bill. A voice vote was taken with all members voting in favor of the motion with the exception of Rep. Giacometto. HB 522, TABLED.

ACTION ON HOUSE BILL NO. 366: Rep. Addy moved DO PASS. He also moved to amend, starting on page 1, line 25; striking \$80,000.00 and inserting \$60,000.00. Rep. Giacometto stated that he was opposed to the amendment and to the motion. He felt the amount should be kept at \$30,000.00. Question was called and a voice vote was taken. The amendment CARRIED 13-4. Reps. Meyers, Keller, Hannah, and Giacometto dissenting. Rep. Addy moved HB 366 DO PASS AS AMENDED. Rep. Mercer made a substitute motion of DO NOT PASS. Rep. Mercer felt that \$60,000.00 was not appropriate and that the bill would get shot right down on the House floor. He stated that this was tort reform through the back door because if property is exempt and someone gets sued, why should anyone care. Rep. Addy commented that in a world infested by frivolous plaintiffs, greedy lawyers, liberal judges and run away juries, he felt the homeowners were entitled to a little protection. Rep. Hannah agreed with Rep. Addy. Rep. Rapp-Svrcek stated that in the interest of fairness, he felt that tort reform should be provided for senior citizens and homeowners. Rep. Meyers felt that the very people the bill proposes to help would be the people not helped and he opposed the bill. Rep. Grady also opposed the bill because he stated to borrow money in these times was simply too tough to do. Rep. Hannah pointed out that his experience with the lending community was if you did not need the money, they would be happy to give a loan and if you did need the money they would not give it. He stated that the bill would not affect the lending community and it would not affect anybody getting the money anyplace or anywhere and for that reason he felt the legislation should be supported. Rep. Giacometto pointed out that this was the bill that would hurt everybody. Question was called and a voice vote was taken. The motion CARRIED 8-8. Rep. Rapp-Svrcek called for a Roll Call Vote. The motion carried 8-9. (See Roll Call Vote, 8:39 a.m.). Rep. Lory asked if there was any objection to reversing the vote and found no objection. The motion being DO PASS AS AMENDED. HB 366, DO PASS AS AMENDED.

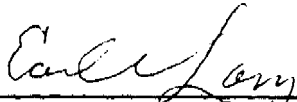
remain as it was without the amendments. Question was called on the original form of the bill with no amendments. Chairman Lory pointed out that there was a technical question regarding the bill and a motion must be made to take the amendments off the bill. A voice vote was taken and the majority FAVORED the motion. The amendments were taken off the bill. Rep. Daily moved DO PASS. Rep. Mercer pointed out that as the bill read, parents would be fined \$250.00 for something their child did and that was a high fine. Rep. Gould stated that lawyers would not be willing to take a case for under \$100.00. Rep. Mercer did not see why parents should be punished in the way of \$250.00 for the actions of their kids. Rep. Strizich felt the bill was creating a situation for contempt in the legal system and stated that 90% of the kids caught return the merchandise. Rep. Hannah moved to TABLE the bill. A voice vote was taken and the motion CARRIED unanimously.

ACTION ON HOUSE BILL NO. 754: Rep. Miles moved TO TAKE THE BILL OFF THE TABLE. A voice vote was taken and the majority FAVORED the motion. HB 754 WAS TAKEN OFF THE TABLE. Rep. Miles moved DO PASS. Question was called and a voice vote was taken. The motion CARRIED 9-6. HB 754, DO PASS.

ACTION ON HOUSE BILL NO. 495: Rep. Gould moved DO PASS. Rep. Mercer moved to amend by deleting lines 16-20. Question was called. A voice vote was taken with the amendments PASSING unanimously. Rep. Hannah moved to TABLE HB 495. A voice vote was taken and the motion FAILED 6-7. Question was called and a voice vote was taken on the motion. The motion CARRIED 9-3. HB 495, DO PASS AS AMENDED.

ACTION ON HOUSE BILL NO. 192: Rep. Cobb moved to TABLE the bill. A voice vote was taken and the motion carried unanimously.

ADJOURNMENT: There being no further business to come before the committee, the meeting was adjourned at 1:20 p.m.



EARL LORY, Chairman

DAILY ROLL CALL
JUDICIARY

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 23, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)	✓		
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

STANDING COMMITTEE REPORT

FEBRUARY 23,

87

19

JUDICIARY

Mr. Speaker: We, the committee on

HOUSE BILL NO. 754

report

☒

do pass

☐ do not pass

☐

be concurred in

☐ be not concurred in

☐

as amended

☐ statement of intent attached

Chairman

FIRST

WHOTE

reading copy ()
color

STATUS SHEET

50th LEGISLATIVE SESSION

RULES

COMMITTEE

HOUSE BILLS

BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
HB 115	1/8/87	1/26/87 2/19/87	TABLED 2/19/87								
HB 149	1/12/87	1/21/87 1/22/87	1/22/87		1/22/87						
HB 398	1/22/87	1/26/87 2/19/87	TABLED 2/19/87								
HB 550	1/30/87	2/3/87	2/3/87	2/3/87							
HB 597	2/4/87	2/17/87 2/19/87	TABLED 2/19/87								
HB 702	2/11/87	2/17/87 2/19/87	2/19/87			2/19/87					
HB 731	2/13/87	2/17/87 2/19/87	2/19/87			2/19/87					
HB 754	3/2/87	3/26/87	3/26/87			3/26/87					
HB 291	3/19/87	3/26/87	TABLED 3/26/87								
HB 904	3/28/87	3/28/87	TAKEN FROM RULES AND 3/28/87	PLACED IN APPROPRIATIONS							

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
RULES COMMITTEE
50TH LEGISLATIVE SESSION

March 26, 1987

The twelfth meeting of the House Rules Committee was called to order by Chairman Tom Hannah on Thursday, March 26, 1987 at 1:10 p.m. in Room 428-A of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Vincent who was absent.

Al Abramson from the Chief Clerk's Office updated the committee with the rules revision project. He submitted an outline and further explained the purpose of the project. (See Exhibit 1.) He said legislators desirous to see other changes made have submitted various proposals. They are also trying to figure out how to cut back the joint rules. Al informed the committee that they are presently working on these proposals and plan to have something drafted for legislators to look at by next week.

CONSIDERATION OF SB 113: AN ACT CLARIFYING THE STATUTES REGARDING PRESESSION ACTIVITIES OF THE LEGISLATURE.

Senator Delwyn Gage, District No. 5, sponsor of SB 113 said this bill would basically change some language in statute in order to conform with pre session caucus activity.

PROPOSERS: None.

OPPOSERS: None.

Senator Gage closed, and the hearing closed on HB 113.

CONSIDERATION OF SB 29: AN ACT TO REVISE THE TIME FOR HOLDING PRESESSION LEGISLATIVE CAUCUSES.

Because the sponsor of SB 29 was unable to present his bill, Rep. Marks spoke in favor of it. He said the bill was requested by the Legislative Council for purposes of clarifying some language in existing statute.

PROPOSERS: None.

OPPOSERS: None.

A question and answer period followed. Rep. Quilici asked if SB 113 has any affect on SB 29 since they deal with the same section of law. Bob Person, Acting Director of the Legislative Council, said no conflict exists between the bills; they could have been combined.

There being no further questions, the hearing closed on SB 29.

E X E C U T I V E S E S S I O N

ACTION ON SB 113: Rep. Addy moved that SB 113 BE CONCURRED IN. The question was called and the motion CARRIED unanimously on a voice vote.

ACTION ON SB 29: Rep. Addy moved that SB 29 BE CONCURRED IN. The question was called and the motion CARRIED unanimously on a voice vote.

CONSIDERATION OF HB 291: AN ACT PROVIDING A CONTINGENT INCREASE IN THE FUEL CONSERVATION SPEED LIMIT.

Rep. Quilici informed the committee that in talking with Rep. Peck, he indicated he would not be present at the hearing today and wasn't concerned with the action the committee chose to take.

Rep. Mercer said a similar bill was heard in the Highways Committee today which would accomplish the same purpose this bill intended to accomplish. On that basis, Rep. Mercer moved TO TABLE HB 291. The question was called and the motion CARRIED unanimously on a voice vote.

CONSIDERATION OF HB 754: AN ACT PROVIDING THE APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHING PRIORITY BASINS.

Rep. Dorothy Bradley, chief sponsor of this bill, provided the committee with a handout explaining what amendments had been previously adopted. (Refer to Exhibit 2.) The first set of amendments would do the following:

- 1) Remove the appropriation for a random sample of claims within decreed basins;
- 2) Remove the extension of authority to the board of natural resources and conservation;
- 3) Provide a small appropriation for the judicial nomination commission to handle increased costs (\$1200 is the cost for one meeting);
- 4) Amend the statement of intent to account for reductions in funding to the DNRC to assist in the adjudication process.

The second set of amendments would limit the judicial nomination commission process to the office of chief water judge.

The third set of amendments offered by Rep. Bradley would remove Rep. Spaeth's amendments requiring that DNRC expenses in assisting the Water Courts be paid from money appropriated to the chief water judge.

Rep. Bradley said she didn't have a position on this particular amendment and would leave it to the committee's discretion.

A question was asked as to why this bill was re-referred to the Rules Committee. Rep. Iverson explained that a question had been raised on the floor as to whether or not there are too many subjects in the title of the bill. He said these proposed amendments would certainly cure any problems with that.

Rep. Mercer inquired if there was anyone present who objected to the amendments offered by Rep. Bradley.

Ed Steinmetz, Water Master with the Water Court, said they have difficulty with two aspects: 1) changing the way the water judges are appointed will have a fiscal impact; and 2) the Spaeth amendment would cause a "separation of powers" problem in his opinion.

In response to Mr. Steinmetz's concern with respect to the fiscal impact, Rep. Iverson said the \$50,000 impact doesn't make any difference. He said this amendment doesn't have anything to do with what it will cost to get another judge; there is nothing in the bill that indicates there should be a replacement of a judge.

Rep. Mercer moved to adopt all three sets of Rep. Bradley's proposed amendments. Chairman Hannah said the question would be divided. Rep. Mercer moved the amendments 1-3 on page 1 of Exhibit 2 be adopted. The question was called and the motion CARRIED unanimously on a voice vote. Rep. Iverson moved the amendments 1-11 on page 1 of Exhibit 2. The question was called and the motion CARRIED unanimously on a voice vote.

Rep. Iverson spoke in favor of striking Rep. Spaeth's amendment saying that politically, this is the way to go.

Rep. Hannah spoke against striking the Spaeth amendment. He feels it will provide an appropriate check.

The question was called on Rep. Mercer's motion to strike the Spaeth amendment and it FAILED on a voice vote.

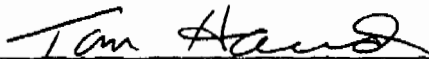
Rep. Mercer was concerned that the bill as it presently reads addresses two subjects. Rep. Brown said the entire bill deals with the water court, and he doesn't see an over-broadening.

Rep. Marks moved that the Rules Committee determine the title of the bill as encompassing one subject and the material contained in the body of the bill is consistent with the title. The motion was seconded, the question called, and the motion CARRIED with Reps. Addy and Ramirez voting no.

Rules Committee
March 26, 1987
Page 4

Rep. Marks moved that HB 754 DO PASS AS AMENDED. The question was called and the motion CARRIED with Rep. Ramirez dissenting.

ADJOURN: There being no further business, the meeting adjourned at 1:45 p.m.


Rep. Tom Hannah, Chairman

DAILY ROLL CALL.

HOUSE RULES COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 26, 1987

[illegible]

3/26/87

Rep. D. Bradley

Amendments to House Bill 754 -- Set number 1
Second Reading Copy and Iverson and Spaeth Committee of the Whole
Amendments

Second Reading Copy

1. TITLE, lines 9 through 11

Following: "BASINS;"

Strike: remainder of line 9 through "COURTS" on line 11

Insert: "appropriating money for judicial nomination commission expenses relating to water court appointments"

2. Page 8, line 11 through line 23, page 9

Strike: section 11 in its entirety

Insert: "NEW SECTION. Section 11. Appropriation. There is appropriated \$1,200 to the Montana supreme court for expenses of the judicial nomination commission in performing functions relating to water court appointments."

3. Page 9, line 25 through line 1, page 10

Strike: "and" on line 25 through "conservation" on line 1, page 10

Iverson Committee of the Whole Amendment to House Bill 754 dated 2/24/87
at 5:00 (the Statement of Intent)

1. Page 2, second paragraph, third sentence

Strike: "the department's field office"

Insert: "geographical"

2. Page 2, second paragraph, fourth sentence

Following: "process,"

Insert: "that the water judge may vary efforts from area to area based on available resources,"

3. Page 2, subheading I

Strike: "field office"

4. Page 2, subheading II

Strike: "field office"

5. Page 2, subheading III

Strike: "field office"

6. Page 2, subheading IV

Strike: "field office"

7. Page 3, subheading V

Strike: "field office"

8. Page 3, subheading VI

Strike: "field office"

9. Page 3, subheading VII

Strike: "field office"

10. Page 3, subheading VIII

Strike: "field office"

11. Page 3, subheading IX

Strike: "field office"

* These amendments:

- 1) remove the appropriation for a random sample of claims within decreed basins;
- 2) remove the extension of authority to the board of natural resources and conservation;
- 3) provide a small appropriation for the judicial nomination commission to handle increased costs (\$1200 is the cost for one meeting); and
- 4) amend the statement of intent to account for reductions in funding to the DNRC to assist in the adjudication process.

Amendments to House Bill 754 -- Set Number 2
Second Reading Copy and Iverson and Spaeth Committee of the Whole
Amendments

1. TITLE, line 5
Following: "CHANGING THE"
Insert: "CHIEF"
2. Page 1, line 24
Strike: "or a water judge"
3. Page 1, line 25
Strike: "3-7-201 and"
4. Page 3, lines 19 through 20
Strike: "or a water judge"
5. Page 4, line 9 through line 9, page 5
Strike: section 6 in its entirety
Renumber: subsequent sections

* Limits the judicial nomination commission process to the office of chief water judge.

Amendments to House Bill 754 — Set Number 3
Second Reading Copy and Iverson and Spaeth Committee of the Whole
Amendments

Spaeth Committee of the Whole Amendments to House Bill 754 dated 2/24/87
at 17:10

1. Strip Spaeth amendment in its entirety

* Removes Rep. Spaeth's amendments requiring that DNRC expenses in assisting the Water Courts be paid from money appropriated to the chief water judge.

VISITORS' REGISTER

RULES

COMMITTEE

	HB 291 - Peck
BILL NO.	HB 754 - Bradley
	SB 29 - Lynch
SPONSOR	SB 113 - Gage

DATE March 26, 1987

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

STANDING COMMITTEE REPORT

March 26 19 87

RULES

Mr. Speaker: We, the committee on

report **HB 754**

☒ do pass

☐ do not pass

☐ be concurred in

☐ be not concurred in

☒ as amended

☐ statement of intent attached

Chairman

PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS

1. TITLE, line 5

Following: "CHANGING THE"

Insert: "CHIEF"

2. TITLE, lines 9 through 11

Following: "BASINS;"

Strike: remainder of line 9 through "COURTS" on line 11

Insert: "APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION
EXPENSES RELATING TO WATER COURT APPOINTMENTS"

3. TITLE, line 12

Following: "3-1-1011,"

Strike: "3-7-201,"

4. Page 1, line 24

Strike: "or a water judge"

5. Page 1, line 25

Strike: "3-7-201 and"

6. Page 3, lines 19 through 20

Strike: "or a water judge"

7. Page 4, line 9 through line 9, page 5

Strike: section 6 in its entirety

Remember: subsequent sections

8. Page 8, line 11 through line 23, page 9

Strike: section 11 in its entirety

Insert: "NEW SECTION. Section 11. Appropriation. There is
appropriated \$1,200 to the Montana supreme court for expenses of the
judicial nomination commission in performing functions relating to water
court appointments."

9. Page 9, line 25 through line 1, page 10

Strike: "and" on line 25 through "conservation" on line 1, page 10

SECOND

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HB 754

Page 2 of 2

Iverson Committee of the Whole Amendment to House Bill 754 dated 3/24/87
at 5:00 (the Statement of Intent)

10. Page 2, second paragraph, third sentence

Strike: "the department's field office"

Insert: "geographical"

11. Page 2, second paragraph, fourth sentence

Following: "process,"

Insert: "that the water judge may vary efforts from area to area based
on available resources,"

12. Page 2, subheading I

Strike: "field office"

13. Page 2, subheading II

Strike: "field office"

14. Page 2, subheading III

Strike: "field office"

15. Page 2, subheading IV

Strike: "field office"

16. Page 3, subheading V

Strike: "field office"

17. Page 3, subheading VI

Strike: "field office"

18. Page 3, subheading VII

Strike: "field office"

19. Page 3, subheading VIII

Strike: "field office"

20. Page 3, subheading IX

Strike: "field office"

STATEMENT OF INTENT

HOUSE BILL 754

A statement of intent is provided for this bill because the legislature desires to indicate to the Montana water courts and the department of natural resources and conservation the basins that should receive priority adjudication efforts.

The legislature finds and determines the basins described in I through IX below to be priority basins. The basins are selected according to the criteria in section 10 of this bill and the priority provided for the Milk River basin in 85-2-321. They are listed by the department's field office GEOGRAPHICAL areas because it is assumed priority basins are needed in each area to ensure efficient use of water court and department staff. The legislature recognizes that deviations from the order of priority provided may be necessary to ensure efficiency in the adjudication process, THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA BASED ON AVAILABLE RESOURCES, and that additional priority basins may be added upon petition to and determination by the water judge.

I. Basins in the Billings field-office area:

Yellowstone River from Bridger Creek to the Clark's Fork of the Yellowstone River (43QJ)

Yellowstone River above and including Bridger Creek

(43B)

Sweet Grass Creek (43BV)

Stillwater River (43C)

Boulder River tributary of Yellowstone River (43BJ)

Clark's Fork of the Yellowstone River (43D)

Yellowstone River between the Clark's Fork of the

Yellowstone River and the Bighorn River (43Q)

II. Basins in the Bozeman field-office area:

Madison River (41F)

Gallatin River (41H)

Shields River (43A)

Ruby River (41C)

Beaverhead River (41B)

Red Rock River (41A)

Big Hole River (41D)

III. Basins in the Glasgow field-office area:

Rock Creek tributary of the Milk River (40N)

Frenchman Creek (40L)

Milk River below Whitewater Creek including Porcupine Creek (40O)

Beaver Creek tributary of the Milk River (40M)

Whitewater Creek (40K)

Dry Creek (40D)

Missouri River between the Musselshell River and Fort

1 Peck Dam (40E)

2 IV. Basins in the Havre field-office area:

3 Sage Creek (40G)

4 Milk River between Fresno Reservoir and Whitewater

5 Creek (40J)

6 Peoples Creek (40I)

7 Willow Creek (41N)

8 Teton River (41O)

9 Sun River (41K)

10 V. Basins in the Helena field-office area:

11 Dearborn River (41U)

12 Clark Fork above the Blackfoot River (76G)

13 Boulder River tributary of the Jefferson River (41E)

14 Jefferson River (41G)

15 Missouri River above Holter Dam (41I)

16 VI. Basins in the Kalispell field-office area:

17 Milk River above Fresno Reservoir (40F)

18 Big Sandy Creek (40H)

19 Yaak River (76B)

20 Fisher River (76C)

21 Kootenai River (76D)

22 Clark Fork below Flathead Lake (76N)

23 South Fork of the Flathead River (76J)

24 Middle Fork of the Flathead River (76I)

25 Swan River (76K)

1 Flathead River above Flathead Lake (76LJ)

2 VII. Basins in the Lewistown field-office area:

3 Milk River between Fresno Reservoir and Whitewater

4 Creek (40J)

5 Judith River (41S)

6 Musselshell River above Roundup (40A)

7 Musselshell River below Roundup (40C)

8 Flatwillow Creek including Box Elder Creek (40B)

9 VIII. Basins in the Miles City field-office area:

10 Beaver Creek tributary of the Little Missouri River

11 (39G)

12 Yellowstone River between the Tongue River and the

13 Powder River (42K)

14 Little Missouri River above Little Beaver Creek (39F)

15 Rosebud Creek (42A)

16 Little Beaver Creek (39FJ)

17 Box Elder Creek (39E)

18 Yellowstone River below Powder River (42M)

19 IX. Basins in the Missoula field-office area:

20 Rock Creek tributary of the Clark Fork River (76E)

21 Flint Creek (76GJ)

22 Clark Fork between the Blackfoot River and the Flathead

23 River (76M)

24 Bitterroot River (76H)

25 Blackfoot River (76F)

1 HOUSE BILL NO. 754

2 INTRODUCED BY BRADLEY, IVERSON, SPAETH

3 BY REQUEST OF THE WATER POLICY COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF
6 WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY
9 BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND~~
10 ~~ANALYSIS OF CLAIMS WITHIN DECREEES ISSUED BY THE WATER COURTS~~
11 ~~APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION~~
12 ~~EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING~~
13 ~~PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER~~
14 ~~JUDGES; ; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,~~
15 ~~3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND~~
16 ~~85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND~~
17 ~~PROVIDING AN EFFECTIVE DATE."~~
18

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 3-1-1001, MCA, is amended to read:

21 "3-1-1001. Creation, composition, and function of
22 commission. (1) A judicial nomination commission for the
23 state is created. Its function is to provide the governor
24 with a list of candidates for appointment to fill any
25 vacancy on the supreme court or any district court and to

1 provide the chief justice of the supreme court with a list
2 of candidates for appointment to fill any term or vacancy
3 for the chief water judge or--a water judge pursuant to
4 3-7-201 and 3-7-221. The commission shall be composed of
5 seven members as follows:

6 (a) four lay members who are neither judges nor
7 attorneys, active or retired, who reside in different
8 geographical areas of the state, and each of whom is
9 representative of a different industry, business, or
10 profession, whether actively so engaged or retired, who
11 shall be appointed by the governor;

12 (b) two attorneys actively engaged in the practice of
13 law, one from each congressional district, who shall be
14 appointed by the supreme court;

15 (c) one district judge elected by the district judges
16 under an elective procedure initiated and conducted by the
17 supreme court and certified to such election by the chief
18 justice of the supreme court. The election shall be
19 considered an appointment for the purposes of this part.

20 (2) Appointments provided for in this section shall be
21 made within 30 days of the completion of the preceding
22 terms."

23 Section 2. Section 3-1-1006, MCA, is amended to read:

24 "3-1-1006. Secretary -- election and duties. (1) The
25 commission shall elect one of its members to serve as the

secretary and upon such election shall notify the governor of the name and mailing address of such person.

(2) The secretary shall keep a record of all proceedings by the commission and act as corresponding secretary with the governor's office and with the office of the chief justice of the supreme court."

Section 3. Section 3-1-1008, MCA, is amended to read:

"3-1-1008. Quorum. Four members of the commission shall constitute a quorum for the transaction of business. To submit a name to the governor or to the chief justice of the supreme court, there must be a concurrence of at least four members."

Section 4. Section 3-1-1010, MCA, is amended to read:

"3-1-1010. Dist Lists submitted to governor and chief justice -- report on proceedings. (1) The commission shall meet forthwith after a vacancy occurs on the supreme court or district court and submit to the governor within 30 days from the date of the vacancy a list of not less than three or more than five nominees for appointment.

(2) The commission shall meet to prepare and submit to the chief justice of the supreme court a list of not less than three or more than five nominees for appointment to fill any term or vacancy for the chief water judge or a water judge. The list must be submitted at least 30 days prior to a new term or within 30 days from the date of a

vacancy.

(3) The Any list must be accompanied by a written report to the governor indicating the vote on each nominee, the content of the application submitted by each nominee, and the commission's reasons for recommending each nominee for appointment."

Section 5. Section 3-1-1011, MCA, is amended to read:

"3-1-1011. Governor or chief justice of the supreme court to appoint from list. The governor, or the chief justice of the supreme court for offices described in 3-7-201 or 3-7-221, must make an appointment from the list of nominees submitted by the commission."

~~Section 6. Section 3-7-201, MCA, is amended to read:~~

~~"3-7-201. Designation of water judge. (1) A water judge shall be designated within 30 days after May 11, 1979, for each water division by a majority vote of a committee composed of the district judge from each single judge judicial district and the chief district judge from each multiple judge judicial district, wholly or partly within the division. Except as provided in subsection (2) and 3-7-213, a water judge must be a district judge or retired district judge of a judicial district wholly or partly within the water division. A water judge shall have the qualifications for district court or supreme court judges found in Article VII, section 9, of the Montana~~

1 constitution:

2 {2}--The--chief--justice--of--the--supreme--court--shall
3 appoint-a-water-judge-as-provided-in--Title--37--chapter--17
4 part-10:

5 {2}{3}--A--district-judge-or-retired-district-judge-may
6 sit-as-a-water-judge may-sit in-more-than--one--division--if
7 requested--by--the--chief--justice-of-the-supreme-court,--the
8 chief-water-judge or-the-water-judge--of--the--division--in
9 which-he-is-requested-to-sit:

10 {3}{4}--A--water--judge,--when--presiding--over-a-water
11 division,--presides--as--district--judge--in--and--for--each
12 judicial--district---wholly--or--partly--within--the--water
13 division:"

14 Section 6. Section 3-7-213, MCA, is amended to read:

15 "3-7-213. Designation of alternate judge. The water
16 judge may designate any--other--district--judge--or--retired
17 district--judge a district judge, retired district judge, or
18 another water judge to preside in his absence on his behalf
19 as water judge for the immediate enforcement of an existing
20 decree or the immediate granting of extraordinary relief as
21 may be provided for by law upon an allegation of irreparable
22 harm."

23 Section 7. Section 3-7-221, MCA, is amended to read:

24 "3-7-221. Appointment of chief water judge -- term of
25 office. (1) The chief justice of the Montana supreme court

1 shall appoint a chief water judge from--among--the--district
2 judges--serving--or-retired-as-of-the-time-of-appointment as
3 provided in Title 3, chapter 1, part 10.

4 {2} To be eligible for the office of chief water
5 judge, a person shall have the qualifications for district
6 court or supreme court judges found in Article VII, section
7 9, of the Montana constitution.

8 {2}{3} The term of office of the chief water judge is
9 from the date of initial appointment until June 30, 1985.
10 After June 30, 1985, the term of office is 4 years, subject
11 to continuation of the water divisions by the legislature."

12 SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

13 "85-2-243. Department assistance to water judges.

14 {1} The department, subject to the direction of the water
15 judge, shall,--without-cost-to-the-judicial-districts--wholly
16 or-partly-within-his-water-division:

17 {1}{a} provide such information and assistance as may
18 be required by the water judge to adjudicate claims of
19 existing rights;

20 {2}{b} establish information and assistance programs
21 to aid claimants in the filing of claims for existing rights
22 required by 85-2-221;

23 {3}{c} conduct field investigations of claims that the
24 water judge in consultation with the department determines
25 warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated by the legislature for the expenses of the chief water judge under 3-7-222 except to the extent a specific appropriation has been made to the department to carry out its functions under subsection (1)."

Section 9. Section 85-2-701, MCA, is amended to read:

"85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to

conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by [section 10] its highest priority."

NEW SECTION. Section 10. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus making adjudication of other rights in the basin or subbasin important for timely issuance of preliminary or final decrees;

(c) the basin or subbasin's location would help ensure

efficient use of department and water court resources; and
 (d) the adjudication process in the basin or subbasin
 is nearing the issuance of a decree.

(2) The water judge may designate a basin for priority
 adjudication upon petition of 100 or more persons who have
 filed claims within the basin, or he may designate a
 subbasin for priority adjudication upon petition of a
 majority of persons who have filed claims within the
 subbasin. The basin or subbasin shall receive priority,
 however, only if it meets one or more of the criteria in
 subsection (1).

(3) If adjudication work in one or more of the
 priority basins or subbasins has been completed or has been
 suspended for good cause, the water judge may select other
 basins or subbasins for priority adjudication, based on the
 criteria in subsection (1).

NEW SECTION:--Section 11--Appropriation for sample--of
claims--within--decrees:--(1)--There is appropriated to the
environmental quality council for use by--the--water--policy
committee--\$92,888--from the water development state special
revenue fund for the--biennium--ending--June--30,--1989,--to
undertake--a--random--sampling and analysis for accuracy and
consistency--of--claims--in--basins--that--have--undergone
adjudication--efforts and for which a temporary preliminary,
preliminary, or final decree has been issued. The analysis

must be based on the requirements for final decrees provided
in 85-2-234.

(2)--The office of the legislative auditor shall assist
the water policy committee in conducting the random sampling
and analysis. The water policy committee may contract with a
qualified--consultant--to--conduct--the--random sampling and
analysis. The analysis must be completed by June--30,--1989,
and--water--policy--committee recommendations resulting from
the analysis must be submitted to the legislature by January
17-1989.

(3)--In devising the random sampling and analysis,--the
water--policy committee shall consult with the department of
natural resources and--conservation--and--with--the--Montana
water courts.

(4)--All--claimants--whose claims are randomly selected
for the sampling and analysis shall assist the water--policy
committee--and--its--consultant--in--reviewing--claims--for
accuracy and consistency. Assistance provided by a--claimant
may not involve financial cost to the claimant.

(5)--The--water policy committee and its consultant may
enter--the--property--of--a--claimant--to--conduct--field
investigations upon providing written notice to the claimant
at least 14 days in advance of the investigation.

(6)--Information--derived--from the random sampling and
analysis that is specific to an individual claimant must--be

1 kept---confidential---and---may---not---prejudice---the---final
2 adjudication-of---that---claimant's---water---rights---However,
3 information---derived---from---the-random-sampling-and-analysis
4 may-be-described-in-general-terms-and-is-public-information.

5 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS
6 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR
7 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING
8 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

9 NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,
10 MCA, IS REPEALED.

11 NEW SECTION. Section 13. Extension of authority. Any
12 existing authority of the judicial nomination commission and
13 the---board---of---natural---resources---and-conservation to make
14 rules on the subject of the provisions of this act is
15 extended to the provisions of this act.

16 NEW SECTION. Section 14. Codification instruction.
17 Section 10 is intended to be codified as an integral part of
18 Title 85, chapter 2, part 2, and the provisions of Title 85,
19 chapter 2, part 2, apply to section 10.

20 NEW SECTION. Section 15. Effective date. This act is
21 effective July 1, 1987.

-End-

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325

DAYS: MON THRU FRI

TIME: 10:00 A.M.

SECRETARY-MARY HUBER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
HB0720	3/04	3/25		CONCUR		3/25
SPAETH, GARY			ADOPT MODEL CLOSE CORPORATION ACT			
HB0737	3/02	3/26		CONCUR		3/26
BROWN, DAVE			PETITION FOR EXTENSION OF COMMITMENT IN COURT WHERE FACILITY IS LOCATED			
HB0740	3/02	3/26		CONCUR AS AMENDED		3/27
COBB, JOHN			ACCOUNTING FOR AND DISTRIBUTING FINES, ETC. IN JUSTICE COURTS			
HB0748	3/02	3/25		CONCUR AS AMENDED		3/26
RAMIREZ, JACK			ALLOW CORPORATIONS TO LIMIT DIRECTORS' LIABILITY			
HB0754	4/03	4/08		CONCUR AS AMENDED		4/9
BRADLEY, DOROTHY			PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS			
HB0761	3/02	3/26		TABLED	tabled 3/27	—
THOFT, BOB			ALTERNATIVE METHOD OF FURNISHING BAIL SET AT \$1,000 OR LESS			
HB0790	3/02	3/19		TABLED		3/27
REHBERG, DENNIS			COSTS AND ATTORNEY FEES OF SMALL BUSINESS PAID BY STATE IN CERTAIN ACTIONS			
HB0800	3/02	3/13		ADVERSE REPORT		3/13
RAPP-SVRCEK, PAUL			ALLOW DISCHARGE OF SUPPORT DELINQUENCIES IN CERTAIN INCOME WITHHOLDING CASES			
HB0805	3/02	3/17		TABLED	tabled 3/17	—
ROTH, RANDE			SUSPEND REGISTRATION AND PLATES FOR NONPAYMENT OF VEHICLE LIABILITY			
HB0861	4/03	4/07		CONCUR AS AMENDED		4/9
NATHE, DENNIS			DISCLOSURE OF INFORMATION ON TRANSFER OF RAILROAD LINE			
HB0873	4/02	4/07		CONCUR		4/8
HANNAH, TOM			REVISE AND CLARIFY HOMICIDE LAW			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

April 8, 1987

The fifty-seventh meeting of the Senate Judiciary Committee was called to order on April 8, 1987 at 10:00 a.m. in Room 325 of the state Capitol, by the chairman, Senator Joe Mazurek.

ROLL CALL: All committee members were present.

CONSIDERATION OF HOUSE BILL 754: Representative Dorothy Bradley, District 79, introduced HB 754, which provides an appointment process for water judges and establishes priority basins. She presented the committee with an amendment dealing with the selection of judges. (Exhibit 1)

PROPONENTS: Representative Gary Spaeth, House District 84, presented an amendment called the "Spaeth Amendment". (Exhibit 2) He also gave the committee an amendment that the House put into this bill. (Exhibit 3) He said the DNRC department has to notify the water courts if the courts overspend their budget.

Rep. Dennis Iverson, House District 12, supported the bill with the Spaeth amendment.

OPPONENTS: Lorna Frank, Montana Farm Bureau, opposed the Spaeth amendment because it will cause more conflicts in the water court with the DNRC.

Vernon Westlake, Gallatin County Agricultural Preservation Association, opposed the bill. (Exhibit 4)

Carol Mosher, Montana Cattlemen and Montana Stockgrowers, opposed HB 754. (Exhibit 5)

Terry Murphy, Farmers Union, opposed the Spaeth amendment. He said there is a lot of anger among irrigators over how much power the department has over the water courts.

Ed Steinmetz, Montana Water Court, said the bill has been "watered down" so much that it doesn't even help anyone anymore. He felt the Spaeth amendment is not needed. He can't believe Mr. Spaeth would present such a bill that freely allows funds to be taken out of water court judges salaries. He said the amendment will cause constitutional problems. He said the water court will pay these DNRC employees wages. He didn't know if that was constitutional or not. He pointed out the funds for both these groups involve tax money now. He felt the legislature should fund both groups.

Mary Saunders, Montana Landowners Association, opposed the bill. (Exhibit 6)

Senator Story, District 41, said the subcommittee had several things in mind when doing this bill. He said they wanted his bill to pass, which it did. He stated the committee wanted everyone to file at the department the same time. He said that was passed so the funding for filing was not as large. Senator Story said the subcommittee left in the entire budget for new rights, but one has to remember, the subcommittee budgeted for a whole commission. He felt there is extra money floating around in the rest of the division. He said there are 665 new water right claims filed and an additional 312 requests for water rights were withdrawn. He said there were 6,000 water right transfers recorded and felt that shouldn't take too much money. He said there were 3,000 notices of completion and 161 requests for a change of appropriation. He felt there is quite a bit of spare change in the division and felt the Spaeth amendment was really not needed.

Senator Sam Hofman, Senate District 38, opposed the bill because the DNRC department is acting like a spoiled kid. He felt Judge Leslie, Water Court Judge, was doing a good job.

Joe Barrett, Augusta, Montana, was against the bill because it would hamper the water court adjudication procedure.

DISCUSSION OF HOUSE BILL 754: Representative Spaeth said what he wanted to do was detail what the department does, and since they are at the disposal of the water judge, if the DNRC runs out of money because of a task given to them by the water judges, then the water courts pay for it. Rep. Spaeth said it will make the court give the department only real important things to do since it involves their money. He said he wanted to redraft his amendment. (Exhibit 7)

Vernon Westlake didn't like the redraft of Spaeth's amendment.

Ed Steinmetz said this amendment will shut down the water court in a year.

Senator Mazurek said that is a matter that should be dealt with by the appropriation committee.

Senator Crippen asked if the court is going to direct the department on how to spend the money that is appropriated. Mr. Steinmetz said the department provides a variety of functions for the court. He said because there is not enough money in the fund, then the department will only perform certain functions. He said many of the functions of the water court are not that important. Senator Yellowtail said it sounds like Mr. Steinmetz wants to shut the water court down.

Senator Blaylock asked Lorna Frank what she thought about increasing taxes to fund the water court. She didn't think it was a good idea.

Senator Blaylock inquired if the DNRC can function with the funds that have been given. A gentleman from the DNRC that was not identified, said Senator Story wanted to take a million dollars out of the DNRC account. He said that proposal would eliminate 20 FTE's.

Representative Iverson said he liked Spaeth's last draft of the bill much better than the other ones.

Senator Pinsoneault asked if anyone has thought of another judge taking Judge Leslie's position.

Senator Mazurek asked if the committee needed to look at the repealer. Rep. Spaeth said no.

Representative Bradley in closing, said she didn't know of any retired judges that might be interested if Judge Leslie retires. She also said one can't expect an agency to do anything without money.

ACTION ON HOUSE BILL 873: Senator Pinsoneault stated there is confusion in the felony murder rule of Montana. He said this law is an expansion of the felony murder rule.

ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date April 8th

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

SENATE JUDICIARY

EXHIBIT NO. 1

DATE April 8 198

BILL NO. HB 754

Amendments to HB754
Third Reading Copy

1. Page 4, line 10
Strike: "offices"
Insert: "the office"
2. Page 4, line 11
Strike: "3-7-201 or"

HOUSE BILL 754

SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

"85-2-243. Department assistance to water judges.

(1) The department, subject to the direction of the water judge, shall, without cost to the judicial districts wholly or partly within his water division,

(1)(a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

(2)(b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

(3)(c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

(4)(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated by the legislature for the expenses of the chief water judge under 3-7-222 except to the extent a specific appropriation has been made to the department to carry out its functions under subsection (1)."

AMENDMENTS
TO HOUSE BILL 754
(THIRD READING COPY)

SENATE JUDICIARY

EXHIBIT NO. 3

DATE April 8 1968

BILL NO. HB 754

1. Page 7, lines 10 through 13

Following: "legislature" on line 10

Strike: remainder of line 10 through line 13

Insert: "to the department for the adjudication program.

If a water judge directs the department to perform a function under subsection (1) for which the department has not been funded or if the the department does not have sufficient funds remaining in its adjudication appropriation to carry out the function the expenses incurred must be paid from the appropriation of the water divisions for their activities under Title 3, chapter 7. The department shall notify the water judge when department assistance will result in costs to the water division."

Senate Judiciary Committee
Chairman: Senator Joe Mazurek

SENATE JUDICIARY

EXHIBIT NO. 4

DATE April 8, 1987

BILL NO. HB 754

Mr. Chairman and Members of the Committee:

I am Vernon Westlake, representing the Gallatin County Agricultural Preservation Association. For the Record, our organization opposes H.B. 754 because it proposes legislation that is not needed and cannot be justified at this time.

I am asking this Committee today the same question that I asked the House Judiciary Committee: How many of the 204,000 water rights claimants have indicated dissatisfaction with the adjudication process under the jurisdiction of the Water Court? I can safely say that a very large percentage want the process completed as quickly as possible and support the Water Court to do so.

The Bill proposes a major change in the system for the appointment of Water Judges which could increase the cost of operation of the Water Court by many thousands of dollars. Judge Lessley, Chief Water Judge, receives his retirement pay as his salary, thus saving the State of Montana a substantial amount of money. I understand that a similar situation exists with the other Water Judges, they are either retired or are serving as a District Judge in conjunction with being a Water Court Judge. This is one good example of the fact that H.B. 754 is not needed now.

Another good reason that H.B. 754 is not needed regards Section 8 where Section 85-2-243 is amended. In Paragraph (1) there is a deletion of the following phrase, "without cost to the judicial districts wholly or partly within his water division." This amendment is referred to as the Spaeth Amendment and it could bring about additional problems for the Water Court. The DNRC could conceivably drain the Water Court's budget, thereby causing a real slow-down of the adjudication process.

I shall conclude by saying that H.B. 754 is not needed and should be allowed to die a natural death in this Committee. The Water Court has already demonstrated that it is better able to complete the adjudication process at a lower cost to the taxpayers and can do so in a shorter length of time.

Respectfully submitted,

Vernon L. Westlake
Chairman, Water Committee
Gallatin County A.P.A.

3186 Love Lane
Bozeman, Mt. 59715

For the record, my name is Carol Mosher, and I am representing the Montana CattleWomen *AND The MONTANA STOCKGROWERS*

There are some parts of HB 754 that we can support. However, we would suggest that under Section 8, on page 7, subsection 2, lines 6 thru 13 be eliminated from the bill. This is the section saying that when Judge Lessley asks the DNRC to carry out some function and the DNRC has already used up their money for that purpose, then the cost of the DNRC doing that job will come out of money appropriated by the legislature for the expenses of the chief water judge. To us, this could make for further confrontation between the Court and DNRC. We believe that the DNRC and the Water Court should each have their own necessary appropriations, and not be put in the position of getting in each other's pockets. This paragraph could cause further halts in the adjudication process.

In a very recent Supreme Court decision that dealt with the issue of adoption of rules relating to the verification of water claims in the adjudication process, it was ruled that the Water Court and the DNRC meet to draft proposed rules which the Supreme Court will then adopt. It further stated in this Supreme Court ruling, Quote, "--we hasten to add that nothing in this determination shall be taken to demean or underestimate the crucial role to be played by the DNRC in the adjudication of water rights claims. A lack of departmental cooperation in the furnishing of such technical expertise, assistance or information could bring the judicial adjudication of water rights to a grinding halt. It was to insure ongoing, uninterrupted progress towards ultimate quantification of water rights that the legislature provided in Section 85-2-243, MCA, that the DEPARTMENT SHOULD BE SUBJECT TO THE DIRECTIONS OF THE WATER JUDGES IN MATTERS AFFECTING ADJUDICATION." Unquote.

Page 2
HB 754
Senate Judiciary Comm.

I do not know whether this bill meets your qualifications for rules on how a bill is written, but it was interesting to note that the only three attorneys on the House Rules Committee voted that it did not meet their rules qualifications. However, the remaining members of that committee held the majority, and they passed the bill on to the floor of the House.

Our organization supports Judge Lessley in the adjudication process and we sincerely hope that you will eliminate this part of the bill that could cause us problems in that process.

Carol Mosher

SENATE JUDICIARY
EXHIBIT NO. 5
DATE 4-8-87
BILL NO. H.B. 754



MONTANA LANDOWNERS ASSOCIATION, INC.

Senate Judiciary Committee
State Capitol
Capitol Station
Helena, Montana 59724

4-7-87

SENATE JUDICIARY

EXHIBIT NO. E 6

DATE April 8, 1987

BILL NO. HB 754

Re; House Bill 754- Bradley

Dear Senator;

On behalf of the membership of the MONTANA LANDOWNERS ASSN., INC., MADISON CHAPTER, we unanimously oppose this bill and recommend that you reject it as written. If you can amend it to eliminate the sections where there will be any participation by the DNRC other than in a minimum of authority, we hope you will do so. Otherwise, please kill the bill in your committee.

There is so much control of everyday existence already in the hands of Government agencies that we need to recognize the need to curb this trend whenever possible.

The list of the over 140 members of MLA, INC., Madison Chapter, is shown on the attached paper. We unanimously object to this bill.

Thank you,

Mary Saunders, Secretary
MLA, INC., Madison Chapter
Box 612
Ennis, Montana 59729

Enclosure.

MLA, INC., MADISON CHAPTER
MEMBERSHIP ROSTER 3-1-87

SENATE JUDICIARY

EXHIBIT NO. 6

DATE 4-8-87

BILL NO. H.B. 754

2 Margaret W. Allen	Livingston, Mt.	4 Longhorn Ranch	Ennis, Montana
2 Norman & Gay Ashcraft	Twin Bridges, Mont.	1 Robert Lott	Twin Bridges, Montana
2 Norman Ashcraft, Jr.	Gallatin Gateway, Mt.	1 M.J. Lott	Twin Bridges, Montana
2 George & Grace Boehm	Ennis, Montana.	2 Richard & Ann Lower	Twin Bridges, Mont.
2 Mitch & Elaine Boken	Twin Bridges, Mont.	2 Wells & Lou Morris	Ennis, Montana
2 George & Marlys Boltz	Ennis, Montana	1 Ralph Moulton	Twin Bridges, Montana
2 Kevin & Kathy Boltz	Ennis, Montana	2 Triple Tree Ranch	Bozeman, Montana
1 Cynthia Boomhower	Cameron, Montana	2 Lynn & Donna Owens	McAllister, Montana
2 Lloyd & Billie Brewton	Cody, Wyoming	1 Ralph Paugh	Ennis, Montana
2 Sphinx Mt. Ranch	Cameron, Montana	2 W.M & June Perrault	Bozeman, Montana
1 Jess Burgoon	Ennis, Montana	1 Charles Reid	Twin Bridges, Montana
1 Clinton Cain	Norris, Montana	2 Jack Reints	Ennis, Montana
2 J & M Livestock	McAllister, Montana	2+ Royal Teton Ranch	Corwin Springs, Mt.
2+ The Channels Ranch	Ennis, Montana	2 John T. Salver	McAllister, Montana
1 Carleen Clark	Twin Bridges, Montana	2 J.H. & Mary Saunders	Ennis, Montana
2 D.E. & Delores Cox	Twin Bridges, Mont.	2 R.E. & Carol Saunders	Wh. S. Sp., Mont.
2 H.W. & Patricia Dahlberg	Woodland Hills, Calif.	2 Triple S Ranch	McAllister, Montana
2+ Diamond J. Ranch	Ennis, Montana	2 Henry Seitz Ranch	Broadview, Montana
2 Ken & Gin Doze	Ennis, Montana	2 David & Janeen Skank	McAllister, Mt.
2 Elford Ranches	Twin Bridges, Montana	2 Sid & Lenore Smith	Twin Bridges, Montana
2 Gil & Liz Evans	Virginia City, Mont.	2+ Sun Ranch	Cameron, Montana
1 Harleigh Farwell	Redmond, Wash.	1 John E. Taft	Lima, Montana
2 David & Dee Freeman	Augusta, Mont.	2 E.S. & Clara Tash	Polaris, Montana
2 Gormann Ranch	McAllister, Mont.	2 Tom & Kathy Tash	Polaris, Montana
2 Goggins Herfords	Ennis, Montana	2 Richard & Polly Todd	Sheridan, Mont.
1 Robert L. Graham	Twin Bridges, Montana	1 Frank Valgenti	Ennis, Montana
2+ Granger Ranches	Cameron, Montana	2 Open A Ranch	Dillon, Montana
2 Lorents Grosfield	Big Timber, Montana	2 Gene & Lois Walsh	Cameron, Montana
2 Robert Hoffman	Sheridan, Montana	2 Fred & Tina Walsh	Cameron, Montana
2+ Huntman Ranch Co.	Dell, Montana	2 Robt. & Coralene Walsh	Tw. Br., Montana
2 Ken & Viola Iverson	Dell, Montana	2 Richard & Pauline Webel	Ennis, Mont.
2 A & A Hereford Ranch	Dell, Montana	2 Michael & Eilene White	McAllister, Mont.
2 Kalsta Ranch	Glen, Montana	1 Jim Weiferich	Twin Bridges, Montana
2 Harlow Kneeland	Sheridan, Montana	2 Tom & Joan Williams	Ennis, Montana
2 Willard & Louise Keightly	Bozeman, Montana	2 Bud & Diana Wilson	McAllister, Montana
1 Ann Laszio	Cameron, Montana	2 H.K. & Pess Linger	Miles City, Mont.
2 Terry & Lee Leonhardy	Ennis, Montana	2+ Swan Ranch Co.	Twin Bridges, Mont.
2 Orson & Mary Leth	Norris, Montana	1 Richard Ladd	Twin Bridges, Mont.
2 Walter & Mary Linberger	Ennis, Montana		

HOUSE BILL 754

ALL NO

SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

STATE JUDICIARY

"85-2-243. Department assistance to water judges.

EXHIBIT NO. 7

(1) The department, subject to the direction of the water

DATE April 8, 196

judge, shall, without cost to the judicial districts wholly

BILL NO. HB 754

or partly within his water division;

{1} (a) provide such information and assistance as may be required by the water judge to adjudicate claims of existing rights;

{2} (b) establish information and assistance programs to aid claimants in the filing of claims for existing rights required by 85-2-221;

{3} (c) conduct field investigations of claims that the water judge in consultation with the department determines warrant investigation; and

{4} (d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department

under subsection (1) must be paid from the money appropriated by the legislature for the expenses of the chief water judge under

and when that appropriation is expended, then the Department is no longer required to provide further assistance.
3-7-222-except to the extent a specific appropriation has been made to the department to carry out its functions under subsection

{1}: "

DATE: 4/8/87

ADDRESS: 3186 LOVE LANE

PHONE: 388-4380

REPRESENTING WHOM? A. P. A

APPEARING ON WHICH PROPOSAL: H. B. 754

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

DATE: April 2, 1971

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

April 9, 1987

The fifty-eighth meeting of the Senate Judiciary Committee was called to order on April 9, 1987, at 10:00 a.m. by the chairman, Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

ACTION ON HOUSE BILL 754: Senator Pinsoneault moved Rep. Spaeth's latest drafting on the bottom of his amendment. (Exhibit 7 on April 8th meeting.) The motion carried.

Senator Galt asked why sec. 12 was there. He thought maybe it was a protection from lawsuits. Senator Crippen said if the committee takes it out, the statute is still intact.

Senator Galt moved to delete sec. 12 from the bill. Senator Crippen asked Senator Galt if he was going to push to get the million dollars back into the bill. Senator Galt said he would. The motion Failed. (See roll call vote)

Senator Galt moved to strike 3-7-201 on page 4, line 11. The motion carried.

Senator Galt moved to insert "the office" on page 4, line 10. The motion carried.

Senator Blaylock moved HB 754 BE CONCURRED IN AS AMENDED. The motion carried with Senator Galt voting no on the whole bill.

ACTION ON HOUSE BILL 861: Valencia Lane explained the ICC has looked at giving presale information to the public and the Short Line Sales Act doesn't have any kind of provision like this. She said if the committee passes the bill, it will be challenged in court because it is not in the federal law.

ROLL CALL

Judiciary COMMITTEE
49th LEGISLATIVE SESSION -- 1985

Date April

NAME	PRESENT	ABSENT	EXCUSED
<u>Sen. Manurek</u>	X		
<u>Sen. Crippen</u>	X		
<u>Sen. Beck</u>	X		
<u>Sen. Bishop</u>	X		
<u>Sen. Blaylock</u>	X		
<u>Sen. Brown</u>	X		
<u>Sen. Galt</u>	X		
<u>Sen. Halligan</u>	X		
<u>Sen. Pinconeault</u>	X		
<u>Sen. Yellowtail</u>	X		

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date April 9 Bill No. HB 754 Time _____

NAME	YES	NO
Senator Joe Mazurek, Chairman		X
Senator Bruce Crippen, Vice Chairman	X	
*Senator Tom Beck	X	
Senator Al Bishop	X	
Senator Chet Blaylock		X
Senator Bob Brown		
Senator Jack Galt	X	
Senator Mike Halligan		X
Senator Dick Pinsoneault		X
Senator Bill Yellowtail		X

Mary Y. Huber
Secretary

Chairman

Motion: Motion to delete section 12 from the bill.

DATE _____

COMMITTEE ON

VISITORS' REGISTER

[illegible]

(Please leave prepared statement with Secretary)

STANDING COMMITTEE REPORT

SCRHB754

SENATE

.....April 9,..... 1987.....

MR. PRESIDENT

Judiciary

We, your committee on.....

House Bill

754

having had under consideration..... No.....

third

blue

reading copy (.....)
color

PROVIDES APPOINTMENT PROCESS FOR WATER JUDGES & ESTABLISHES PRIORITY BASINS

Bradley (Stimatz)

Respectfully report as follows: That.....House Bill..... No...754.....

BE AMENDED AS FOLLOWS:

1. Page 4, line 10.

Strike: "offices"

Insert: "the office"

2. Page 4, line 11.

Strike: "3-7-201 or"

3. Page 7, lines 10 through 13.

Following: "legislature" on line 10

Strike: remainder of line 10 through "(1)" on line 13

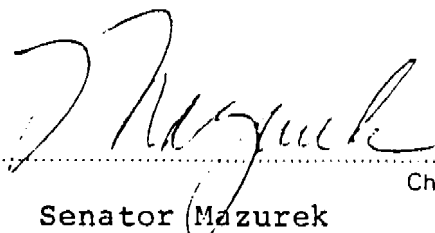
Insert: "and when that appropriation is expended then the department is no longer required to provide further assistance"

C:\LANE\WP\AMDHB754.

XXXXXX

XXXXXX
DO NOT PASS

AND AS AMENDED
BE CONCURRED IN


Senator Mazurek

Chairman.

4/9/87
4:40
JH

1 HOUSE BILL NO. 754

2 INTRODUCED BY BRADLEY, IVERSON, SPAETH

3 BY REQUEST OF THE WATER POLICY COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF
6 WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF
7 ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION
8 COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY
9 BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND~~
10 ~~ANALYSIS OF CLAIMS WITHIN DECREEES ISSUED BY THE WATER COURTS~~
11 APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION
12 EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING
13 PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER
14 JUDGES; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,
15 3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND
16 85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND
17 PROVIDING AN EFFECTIVE DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 Section 1. Section 3-1-1001, MCA, is amended to read:

21 "3-1-1001. Creation, composition, and function of
22 commission. (1) A judicial nomination commission for the
23 state is created. Its function is to provide the governor
24 with a list of candidates for appointment to fill any
25 vacancy on the supreme court or any district court and to

1 provide the chief justice of the supreme court with a list
2 of candidates for appointment to fill any term or vacancy
3 for the chief water judge or--a water judge pursuant to
4 3-7-201 and 3-7-221. The commission shall be composed of
5 seven members as follows:

6 (a) four lay members who are neither judges nor
7 attorneys, active or retired, who reside in different
8 geographical areas of the state, and each of whom is
9 representative of a different industry, business, or
10 profession, whether actively so engaged or retired, who
11 shall be appointed by the governor;

12 (b) two attorneys actively engaged in the practice of
13 law, one from each congressional district, who shall be
14 appointed by the supreme court;

15 (c) one district judge elected by the district judges
16 under an elective procedure initiated and conducted by the
17 supreme court and certified to such election by the chief
18 justice of the supreme court. The election shall be
19 considered an appointment for the purposes of this part.

20 (2) Appointments provided for in this section shall be
21 made within 30 days of the completion of the preceding
22 terms."

23 Section 2. Section 3-1-1006, MCA, is amended to read:

24 "3-1-1006. Secretary -- election and duties. (1) The
25 commission shall elect one of its members to serve as the

1 secretary and upon such election shall notify the governor
2 of the name and mailing address of such person.

3 (2) The secretary shall keep a record of all
4 proceedings by the commission and act as corresponding
5 secretary with the governor's office and with the office of
6 the chief justice of the supreme court."

7 Section 3. Section 3-1-1008, MCA, is amended to read:

8 "3-1-1008. Quorum. Four members of the commission
9 shall constitute a quorum for the transaction of business.
10 To submit a name to the governor or to the chief justice of
11 the supreme court, there must be a concurrence of at least
12 four members."

13 Section 4. Section 3-1-1010, MCA, is amended to read:

14 "3-1-1010. List Lists submitted to governor and chief
15 justice -- report on proceedings. (1) The commission shall
16 meet forthwith after a vacancy occurs on the supreme court
17 or district court and submit to the governor within 30 days
18 from the date of the vacancy a list of not less than three
19 or more than five nominees for appointment.

20 (2) The commission shall meet to prepare and submit to
21 the chief justice of the supreme court a list of not less
22 than three or more than five nominees for appointment to
23 fill any term or vacancy for the chief water judge or a
24 water-judge. The list must be submitted at least 30 days
25 prior to a new term or within 30 days from the date of a

1 vacancy.

2 (3) The Any list must be accompanied by a written
3 report ~~to-the-governor~~ indicating the vote on each nominee,
4 the content of the application submitted by each nominee,
5 and the commission's reasons for recommending each nominee
6 for appointment."

7 Section 5. Section 3-1-1011, MCA, is amended to read:

8 "3-1-1011. Governor or chief justice of the supreme
9 court to appoint from list. The governor, or the chief
10 justice of the supreme court for offices ~~THE OFFICE~~
11 described in 3-7-201-or 3-7-221, must make an appointment
12 from the list of nominees submitted by the commission."

13 ~~Section-6--Section--3-7-201--MCA--is-amended-to-read:~~

14 ~~"3-7-201--Designation-of-water--judge--(1)--A--water~~
15 ~~judge-shall-be-designated-within-30-days-after-May-11,1979,~~
16 ~~for--each--water--division-by-a-majority-vote-of-a-committee~~
17 ~~composed-of--the--district--judge--from--each--single--judge~~
18 ~~judicial--district--and--the--chief-district-judge-from-each~~
19 ~~multiple-judge-judicial-district,wholly--or--partly--within~~
20 ~~the--division--Except--as--provided--in--subsection-(2)--and~~
21 ~~3-7-213,a-water-judge-must-be-a-district-judge--or--retired~~
22 ~~district--judge--of--a--judicial--district--wholly-or-partly~~
23 ~~within-the-water-division: A--water--judge--shall--have--the~~
24 ~~qualifications--for--district--court-or-supreme-court-judges~~
25 ~~found--in--Article--VII--section--9--of--the--Montana~~

1 constitution:

2 {2}--The--chief--justice--of--the--supreme--court--shall
3 appoint-a-water-judge-as-provided-in--Title--3,--chapter--1,
4 part-10:

5 {2}{3}--A--district-judge-or-retired-district-judge-may
6 sit-as-a-water-judge may-sit in-more-than--one--division--if
7 requested--by--the--chief--justice-of-the-supreme-court,--the
8 chief-water-judge, or-the-water-judge--of--the--division--in
9 which-he-is-requested-to-sit:

10 {3}{4}--A--water--judge,--when--presiding--over-a-water
11 division,--presides--as--district--judge--in--and--for--each
12 judicial--district--wholly--or--partly--within--the--water
13 division:"

14 Section 6. Section 3-7-213, MCA, is amended to read:

15 "3-7-213. Designation of alternate judge. The water
16 judge may designate any--other--district--judge--or--retired
17 district--judge a district judge, retired district judge, or
18 another water judge to preside in his absence on his behalf
19 as water judge for the immediate enforcement of an existing
20 decree or the immediate granting of extraordinary relief as
21 may be provided for by law upon an allegation of irreparable
22 harm."

23 Section 7. Section 3-7-221, MCA, is amended to read:

24 "3-7-221. Appointment of chief water judge -- term of
25 office. (1) The chief justice of the Montana supreme court

1 shall appoint a chief water judge from--among--the--district
2 judges--serving--or-retired-as-of-the-time-of-appointment as
3 provided in Title 3, chapter 1, part 10.

4 (2) To be eligible for the office of chief water
5 judge, a person shall have the qualifications for district
6 court or supreme court judges found in Article VII, section
7 9, of the Montana constitution.

8 {2}{3} The term of office of the chief water judge is
9 from the date of initial appointment until June 30, 1985.
10 After June 30, 1985, the term of office is 4 years, subject
11 to continuation of the water divisions by the legislature."

12 SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

13 "85-2-243. Department assistance to water judges.

14 (1) The department, subject to the direction of the water
15 judge, shall, without-cost-to-the-judicial-districts--wholly
16 or-partly-within-his-water-division:

17 {1}{a} provide such information and assistance as may
18 be required by the water judge to adjudicate claims of
19 existing rights;

20 {2}{b} establish information and assistance programs
21 to aid claimants in the filing of claims for existing rights
22 required by 85-2-221;

23 {3}{c} conduct field investigations of claims that the
24 water judge in consultation with the department determines
25 warrant investigation; and

1 ~~(4)(d)~~ provide the water judge with all information in
2 its possession bearing upon existing rights, including all
3 declarations filed with and all information gathered by the
4 department with respect to existing rights in the Powder
5 River Basin.

6 (2) Department assistance to a water judge must be
7 without cost to the judicial districts wholly or partly
8 within the affected water division. Expenses incurred by
9 the department under subsection (1) must be paid from the
10 money appropriated by the legislature for--the--expenses--of
11 the--chief--water--judge--under--3-7-222--except--to--the--extent--a
12 specific--appropriation--has--been--made--to--the--department--to
13 carry--out--its--functions--under--subsection--(1) AND WHEN THAT
14 APPROPRIATION IS EXPENDED THEN THE DEPARTMENT IS NO LONGER
15 REQUIRED TO PROVIDE FURTHER ASSISTANCE."

16 Section 9. Section 85-2-701, MCA, is amended to read:

17 "85-2-701. Legislative intent. (1) Because the water
18 and water rights within each water division are
19 interrelated, it is the intent of the legislature to conduct
20 unified proceedings for the general adjudication of existing
21 water rights under the Montana Water Use Act. Therefore, it
22 is the intent of the legislature that the attorney general's
23 petition required in 85-2-211 include all claimants of
24 reserved Indian water rights as necessary and indispensable
25 parties under authority granted the state by 43 U.S.C. 666.

1 However, it is further intended that the state of Montana
2 proceed under the provisions of this part in an effort to
3 conclude compacts for the equitable division and
4 apportionment of waters between the state and its people and
5 the several Indian tribes claiming reserved water rights
6 within the state.

7 (2) To the maximum extent possible, the reserved water
8 rights compact commission established under 2-15-212 should
9 make the negotiation of water rights claimed by the federal
10 government or Indian tribes in or affecting the basins
11 identified by [section 10] its highest priority."

12 NEW SECTION. Section 10. Process and criteria for
13 designating priority basins or subbasins. (1) The water
14 judges and the department, in performing their functions in
15 the adjudication process, shall give priority to basins or
16 subbasins designated each biennium by the legislature.
17 Basins or subbasins must be designated according to the
18 following criteria:

19 (a) recurring water shortages within the basin or
20 subbasin have resulted in urgent water rights controversies
21 that require adjudication to determine relative rights;

22 (b) federal or Indian reserved rights are nearing
23 determination, either by compact or adjudication, thus
24 making adjudication of other rights in the basin or subbasin
25 important for timely issuance of preliminary or final

1 decrees;

2 (c) the basin or subbasin's location would help ensure
3 efficient use of department and water court resources; and

4 (d) the adjudication process in the basin or subbasin
5 is nearing the issuance of a decree.

6 (2) The water judge may designate a basin for priority
7 adjudication upon petition of 100 or more persons who have
8 filed claims within the basin, or he may designate a
9 subbasin for priority adjudication upon petition of a
10 majority of persons who have filed claims within the
11 subbasin. The basin or subbasin shall receive priority,
12 however, only if it meets one or more of the criteria in
13 subsection (1).

14 (3) If adjudication work in one or more of the
15 priority basins or subbasins has been completed or has been
16 suspended for good cause, the water judge may select other
17 basins or subbasins for priority adjudication, based on the
18 criteria in subsection (1).

19 ~~NEW SECTION:--Section 11:--Appropriation for sample of~~
20 ~~claims within decrees:--(1)--There is appropriated to the~~
21 ~~environmental quality council for use by the water policy~~
22 ~~committee \$92,000 from the water development state special~~
23 ~~revenue fund for the biennium ending June 30, 1989 to~~
24 ~~undertake a random sampling and analysis for accuracy and~~
25 ~~consistency of claims in basins that have undergone~~

1 adjudication efforts and for which a temporary preliminary,
2 preliminary, or final decree has been issued. The analysis
3 must be based on the requirements for final decrees provided
4 in 85-2-234.

5 (2)--The office of the legislative auditor shall assist
6 the water policy committee in conducting the random sampling
7 and analysis. The water policy committee may contract with a
8 qualified consultant to conduct the random sampling and
9 analysis. The analysis must be completed by June 30, 1989,
10 and water policy committee recommendations resulting from
11 the analysis must be submitted to the legislature by January
12 1, 1989.

13 (3)--In devising the random sampling and analysis, the
14 water policy committee shall consult with the department of
15 natural resources and conservation and with the Montana
16 water courts.

17 (4)--All claimants whose claims are randomly selected
18 for the sampling and analysis shall assist the water policy
19 committee and its consultant in reviewing claims for
20 accuracy and consistency. Assistance provided by a claimant
21 may not involve financial cost to the claimant.

22 (5)--The water policy committee and its consultant may
23 enter the property of a claimant to conduct field
24 investigations upon providing written notice to the claimant
25 at least 14 days in advance of the investigation.

1 ~~{6}--information--derived--from--the--random--sampling--and~~
 2 ~~analysis--that--is--specific--to--an--individual--claimant--must--be~~
 3 ~~kept---confidential---and---may---not---prejudice---the---final~~
 4 ~~adjudication--of--that--claimant's--water--rights---~~However,
 5 ~~information--derived--from--the--random--sampling--and--analysis~~
 6 ~~may--be--described--in--general--terms--and--is--public--information.~~

7 NEW SECTION. SECTION 11. APPROPRIATION. THERE IS
 8 APPROPRIATED \$1,200 TO THE MONTANA SUPREME COURT FOR
 9 EXPENSES OF THE JUDICIAL NOMINATION COMMISSION IN PERFORMING
 10 FUNCTIONS RELATING TO WATER COURT APPOINTMENTS.

11 NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,
 12 MCA, IS REPEALED.

13 NEW SECTION. Section 13. Extension of authority. Any
 14 existing authority of the judicial nomination commission and
 15 ~~the--board--of--natural--resources--and--conservation~~ to make
 16 rules on the subject of the provisions of this act is
 17 extended to the provisions of this act.

18 NEW SECTION. Section 14. Codification instruction.
 19 Section 10 is intended to be codified as an integral part of
 20 Title 85, chapter 2, part 2, and the provisions of Title 85,
 21 chapter 2, part 2, apply to section 10.

22 NEW SECTION. Section 15. Effective date. This act is
 23 effective July 1, 1987.

-End-

CONFERENCE COMMITTEE REPORT

Report No. One

4-23 19 87

MR. SPEAKER

We, your FREE Conference Committee on

HB 754

met and considered House Bill 754 in its entirety.

We recommend as follows:

THAT HOUSE BILL 754, reference copy salmon, BE AMENDED AS FOLLOWS:

1. Statement of Intent, page 4.

Following: line 25

Insert: "The legislature intends by the amendment to 85-2-243 in section 8 of this bill that it be interpreted to restrict the department to utilize funds that have been appropriated for the adjudication program. The department's funding level in adjudicating water claims for the 1987-89 biennium is as specifically set forth in House Bill 2."

2. Page 7, line 10.

Following: "appropriated"

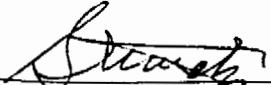
Insert: "to it for the adjudication program"

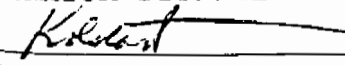
Following: "legislature"

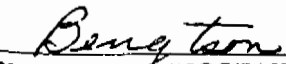
Insert: "to carry out its function under subsection (1)"

And that this Conference Committee report be adopted.

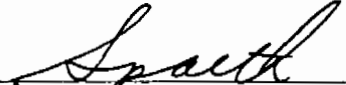
FOR THE SENATE

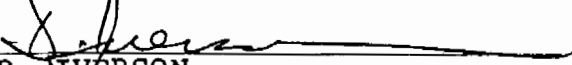

SENATOR STIMATZ


SENATOR KOLSTAD


SENATOR BENGSTON

FOR THE HOUSE


REP. SPAETH


REP. IVERSON


REP. THOEN

STATEMENT OF INTENT

HOUSE BILL 754

A statement of intent is provided for this bill because the legislature desires to indicate to the Montana water courts and the department of natural resources and conservation the basins that should receive priority adjudication efforts.

The legislature finds and determines the basins described in I through IX below to be priority basins. The basins are selected according to the criteria in section 10 of this bill and the priority provided for the Milk River basin in 85-2-321. They are listed by the department's field office GEOGRAPHICAL areas because it is assumed priority basins are needed in each area to ensure efficient use of water court and department staff. The legislature recognizes that deviations from the order of priority provided may be necessary to ensure efficiency in the adjudication process, THAT THE WATER JUDGE MAY VARY EFFORTS FROM AREA TO AREA BASED ON AVAILABLE RESOURCES, and that additional priority basins may be added upon petition to and determination by the water judge.

I. Basins in the Billings field-office area:

Yellowstone River from Bridger Creek to the Clark's Fork of the Yellowstone River (43QJ)

Yellowstone River above and including Bridger Creek (43B)

Sweet Grass Creek (43BV)

Stillwater River (43C)

Boulder River tributary of Yellowstone River (43BJ)

Clark's Fork of the Yellowstone River (43D)

Yellowstone River between the Clark's Fork of the Yellowstone River and the Bighorn River (43Q)

II. Basins in the Bozeman field-office area:

Madison River (41F)

Gallatin River (41H)

Shields River (43A)

Ruby River (41C)

Beaverhead River (41B)

Red Rock River (41A)

Big Hole River (41D)

III. Basins in the Glasgow field-office area:

Rock Creek tributary of the Milk River (40N)

Frenchman Creek (40L)

Milk River below Whitewater Creek including Porcupine Creek (40O)

Beaver Creek tributary of the Milk River (40M)

Whitewater Creek (40K)

Dry Creek (40D)

Missouri River between the Musselshell River and Fort

1 Peck Dam (40E)

2 IV. Basins in the Havre field-office area:

3 Sage Creek (40G)

4 Milk River between Fresno Reservoir and Whitewater

5 Creek (40J)

6 Peoples Creek (40I)

7 Willow Creek (41N)

8 Teton River (41O)

9 Sun River (41K)

10 V. Basins in the Helena field-office area:

11 Dearborn River (41U)

12 Clark Fork above the Blackfoot River (76G)

13 Boulder River tributary of the Jefferson River (41E)

14 Jefferson River (41G)

15 Missouri River above Holter Dam (41I)

16 VI. Basins in the Kalispell field-office area:

17 Milk River above Fresno Reservoir (40F)

18 Big Sandy Creek (40H)

19 Yaak River (76B)

20 Fisher River (76C)

21 Kootenai River (76D)

22 Clark Fork below Flathead Lake (76N)

23 South Fork of the Flathead River (76J)

24 Middle Fork of the Flathead River (76I)

25 Swan River (76K)

1 Flathead River above Flathead Lake (76LJ)

2 VII. Basins in the Lewistown field-office area:

3 Milk River between Fresno Reservoir and Whitewater

4 Creek (40J)

5 Judith River (41S)

6 Musselshell River above Roundup (40A)

7 Musselshell River below Roundup (40C)

8 Flatwillow Creek including Box Elder Creek (40B)

9 VIII. Basins in the Miles City field-office area:

10 Beaver Creek tributary of the Little Missouri River

11 (39G)

12 Yellowstone River between the Tongue River and the

13 Powder River (42K)

14 Little Missouri River above Little Beaver Creek (39F)

15 Rosebud Creek (42A)

16 Little Beaver Creek (39FJ)

17 Box Elder Creek (39E)

18 Yellowstone River below Powder River (42M)

19 IX. Basins in the Missoula field-office area:

20 Rock Creek tributary of the Clark Fork River (76E)

21 Flint Creek (76GJ)

22 Clark Fork between the Blackfoot River and the Flathead

23 River (76M)

24 Bitterroot River (76H)

25 Blackfoot River (76F)

1 THE LEGISLATURE INTENDS BY THE AMENDMENT TO 85-2-243 IN
2 SECTION 8 OF THIS BILL THAT IT BE INTERPRETED TO RESTRICT
3 THE DEPARTMENT TO UTILIZE FUNDS THAT HAVE BEEN APPROPRIATED
4 FOR THE ADJUDICATION PROGRAM. THE DEPARTMENT'S FUNDING LEVEL
5 IN ADJUDICATING WATER CLAIMS FOR THE 1987-89 BIENNIUM IS AS
6 SPECIFICALLY SET FORTH IN HOUSE BILL NO. 2.

HOUSE BILL NO. 754

INTRODUCED BY BRADLEY, IVERSON, SPAETH
BY REQUEST OF THE WATER POLICY COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE CHIEF
WATER JUDGE APPOINTMENT PROCESS TO EXPAND THE POPULATION OF
ELIGIBLE CANDIDATES AND TO INCLUDE A JUDICIAL NOMINATION
COMMISSION PROCESS; PROVIDING FOR ADJUDICATION BY PRIORITY
BASINS; ~~AUTHORIZING AN APPROPRIATION FOR RANDOM SAMPLING AND
ANALYSIS OF CLAIMS WITHIN DECREEES ISSUED BY THE WATER COURTS~~
APPROPRIATING MONEY FOR JUDICIAL NOMINATION COMMISSION
EXPENSES RELATING TO WATER COURT APPOINTMENTS; CLARIFYING
PAYMENT OF EXPENDITURES FOR DEPARTMENT ASSISTANCE TO WATER
JUDGES; AMENDING SECTIONS 3-1-1001, 3-1-1006, 3-1-1008,
3-1-1010, 3-1-1011, 3-7-201, 3-7-213, 3-7-221, 85-2-243, AND
85-2-701, MCA; REPEALING SECTION 85-2-242, MCA; AND
PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 3-1-1001, MCA, is amended to read:

"3-1-1001. Creation, composition, and function of
commission. (1) A judicial nomination commission for the
state is created. Its function is to provide the governor
with a list of candidates for appointment to fill any
vacancy on the supreme court or any district court and to

provide the chief justice of the supreme court with a list
of candidates for appointment to fill any term or vacancy
for the chief water judge or--a water judge pursuant to
3-7-201 and 3-7-221. The commission shall be composed of
seven members as follows:

(a) four lay members who are neither judges nor
attorneys, active or retired, who reside in different
geographical areas of the state, and each of whom is
representative of a different industry, business, or
profession, whether actively so engaged or retired, who
shall be appointed by the governor;

(b) two attorneys actively engaged in the practice of
law, one from each congressional district, who shall be
appointed by the supreme court;

(c) one district judge elected by the district judges
under an elective procedure initiated and conducted by the
supreme court and certified to such election by the chief
justice of the supreme court. The election shall be
considered an appointment for the purposes of this part.

(2) Appointments provided for in this section shall be
made within 30 days of the completion of the preceding
terms."

Section 2. Section 3-1-1006, MCA, is amended to read:

"3-1-1006. Secretary -- election and duties. (1) The
commission shall elect one of its members to serve as the

1 secretary and upon such election shall notify the governor
2 of the name and mailing address of such person.

3 (2) The secretary shall keep a record of all
4 proceedings by the commission and act as corresponding
5 secretary with the governor's office and with the office of
6 the chief justice of the supreme court."

7 Section 3. Section 3-1-1008, MCA, is amended to read:

8 "3-1-1008. Quorum. Four members of the commission
9 shall constitute a quorum for the transaction of business.
10 To submit a name to the governor or to the chief justice of
11 the supreme court, there must be a concurrence of at least
12 four members."

13 Section 4. Section 3-1-1010, MCA, is amended to read:

14 "3-1-1010. ~~List~~ Lists submitted to governor and chief
15 justice -- report on proceedings. (1) The commission shall
16 meet forthwith after a vacancy occurs on the supreme court
17 or district court and submit to the governor within 30 days
18 from the date of the vacancy a list of not less than three
19 or more than five nominees for appointment.

20 (2) The commission shall meet to prepare and submit to
21 the chief justice of the supreme court a list of not less
22 than three or more than five nominees for appointment to
23 fill any term or vacancy for the chief water judge or a
24 water-judge. The list must be submitted at least 30 days
25 prior to a new term or within 30 days from the date of a

1 vacancy.

2 (3) The Any list must be accompanied by a written
3 report ~~to the governor~~ indicating the vote on each nominee,
4 the content of the application submitted by each nominee,
5 and the commission's reasons for recommending each nominee
6 for appointment."

7 Section 5. Section 3-1-1011, MCA, is amended to read:

8 "3-1-1011. Governor or chief justice of the supreme
9 court to appoint from list. The governor, or the chief
10 justice of the supreme court for offices ~~THE OFFICE~~
11 described in 3-7-201 or 3-7-221, must make an appointment
12 from the list of nominees submitted by the commission."

13 ~~Section 6. Section 3-7-201, MCA, is amended to read:~~

14 ~~"3-7-201. Designation of water judge. (1) A water~~
15 ~~judge shall be designated within 30 days after May 11, 1979,~~
16 ~~for each water division by a majority vote of a committee~~
17 ~~composed of the district judge from each single judge~~
18 ~~judicial district and the chief district judge from each~~
19 ~~multiple judge judicial district, wholly or partly within~~
20 ~~the division. Except as provided in subsection (2) and~~
21 ~~3-7-213, a water judge must be a district judge or retired~~
22 ~~district judge of a judicial district wholly or partly~~
23 ~~within the water division. A water judge shall have the~~
24 ~~qualifications for district court or supreme court judges~~
25 ~~found in Article VII, section 9, of the Montana~~

1 constitution.

2 {2}--The--chief--justice--of--the--supreme--court--shall
3 appoint--a--water--judge--as--provided--in--Title--3,--chapter--1,
4 part--10.

5 {2}{3}--A--district--judge--or--retired--district--judge--may
6 sit--as--a--water--judge--may--sit--in--more--than--one--division--if
7 requested--by--the--chief--justice--of--the--supreme--court,--the
8 chief--water--judge, or--the--water--judge--of--the--division--in
9 which--he--is--requested--to--sit.

10 {3}{4}--A--water--judge--when--presiding--over--a--water
11 division,--presides--as--district--judge--in--and--for--each
12 judicial--district--wholly--or--partly--within--the--water
13 division."

14 Section 6. Section 3-7-213, MCA, is amended to read:

15 "3-7-213. Designation of alternate judge. The water
16 judge may designate any--other--district--judge--or--retired
17 district--judge a district judge, retired district judge, or
18 another water judge to preside in his absence on his behalf
19 as water judge for the immediate enforcement of an existing
20 decree or the immediate granting of extraordinary relief as
21 may be provided for by law upon an allegation of irreparable
22 harm."

23 Section 7. Section 3-7-221, MCA, is amended to read:

24 "3-7-221. Appointment of chief water judge -- term of
25 office. (1) The chief justice of the Montana supreme court

1 shall appoint a chief water judge from--among--the--district
2 judges--serving--or--retired--as--of--the--time--of--appointment as
3 provided in Title 3, chapter 1, part 10.

4 (2) To be eligible for the office of chief water
5 judge, a person shall have the qualifications for district
6 court or supreme court judges found in Article VII, section
7 9, of the Montana constitution.

8 {2}{3} The term of office of the chief water judge is
9 from the date of initial appointment until June 30, 1985.
10 After June 30, 1985, the term of office is 4 years, subject
11 to continuation of the water divisions by the legislature."

12 SECTION 8. SECTION 85-2-243, MCA, IS AMENDED TO READ:

13 "85-2-243. Department assistance to water judges.

14 (1) The department, subject to the direction of the water
15 judge, shall, ~~without cost to the judicial districts wholly~~
16 ~~or partly within his water division:~~

17 {1}{a} provide such information and assistance as may
18 be required by the water judge to adjudicate claims of
19 existing rights;

20 {2}{b} establish information and assistance programs
21 to aid claimants in the filing of claims for existing rights
22 required by 85-2-221;

23 {3}{c} conduct field investigations of claims that the
24 water judge in consultation with the department determines
25 warrant investigation; and

(d) provide the water judge with all information in its possession bearing upon existing rights, including all declarations filed with and all information gathered by the department with respect to existing rights in the Powder River Basin.

(2) Department assistance to a water judge must be without cost to the judicial districts wholly or partly within the affected water division. Expenses incurred by the department under subsection (1) must be paid from the money appropriated TO IT FOR THE ADJUDICATION PROGRAM by the legislature TO CARRY OUT ITS FUNCTION UNDER SUBSECTION (1) for--the--expenses--of--the--chief-water-judge-under-3-7-222 except-to-the-extent-a-specific-appropriation-has-been--made to---the---department---to---carry---out---its---functions---under subsection--(1) AND WHEN THAT APPROPRIATION IS EXPENDED THEN THE DEPARTMENT IS NO LONGER REQUIRED TO PROVIDE FURTHER ASSISTANCE."

Section 9. Section 85-2-701, MCA, is amended to read:

"85-2-701. Legislative intent. (1) Because the water and water rights within each water division are interrelated, it is the intent of the legislature to conduct unified proceedings for the general adjudication of existing water rights under the Montana Water Use Act. Therefore, it is the intent of the legislature that the attorney general's petition required in 85-2-211 include all claimants of

reserved Indian water rights as necessary and indispensable parties under authority granted the state by 43 U.S.C. 666. However, it is further intended that the state of Montana proceed under the provisions of this part in an effort to conclude compacts for the equitable division and apportionment of waters between the state and its people and the several Indian tribes claiming reserved water rights within the state.

(2) To the maximum extent possible, the reserved water rights compact commission established under 2-15-212 should make the negotiation of water rights claimed by the federal government or Indian tribes in or affecting the basins identified by [section 10] its highest priority."

NEW SECTION. Section 10. Process and criteria for designating priority basins or subbasins. (1) The water judges and the department, in performing their functions in the adjudication process, shall give priority to basins or subbasins designated each biennium by the legislature. Basins or subbasins must be designated according to the following criteria:

(a) recurring water shortages within the basin or subbasin have resulted in urgent water rights controversies that require adjudication to determine relative rights;

(b) federal or Indian reserved rights are nearing determination, either by compact or adjudication, thus

1 making adjudication of other rights in the basin or subbasin
2 important for timely issuance of preliminary or final
3 decrees;

4 (c) the basin or subbasin's location would help ensure
5 efficient use of department and water court resources; and

6 (d) the adjudication process in the basin or subbasin
7 is nearing the issuance of a decree.

8 (2) The water judge may designate a basin for priority
9 adjudication upon petition of 100 or more persons who have
10 filed claims within the basin, or he may designate a
11 subbasin for priority adjudication upon petition of a
12 majority of persons who have filed claims within the
13 subbasin. The basin or subbasin shall receive priority,
14 however, only if it meets one or more of the criteria in
15 subsection (1).

16 (3) If adjudication work in one or more of the
17 priority basins or subbasins has been completed or has been
18 suspended for good cause, the water judge may select other
19 basins or subbasins for priority adjudication, based on the
20 criteria in subsection (1).

21 NEW SECTION Section 11. Appropriation for sample of
22 claims within decrees. (1) There is appropriated to the
23 environmental quality council for use by the water policy
24 committee \$92,800 from the water development state special
25 revenue fund for the biennium ending June 30, 1989, to

1 undertake a random sampling and analysis for accuracy and
2 consistency of claims in basins that have undergone
3 adjudication efforts and for which a temporary preliminary
4 preliminary or final decree has been issued. The analysis
5 must be based on the requirements for final decrees provided
6 in 85-2-234.

7 (2) The office of the legislative auditor shall assist
8 the water policy committee in conducting the random sampling
9 and analysis. The water policy committee may contract with a
10 qualified consultant to conduct the random sampling and
11 analysis. The analysis must be completed by June 30, 1988,
12 and water policy committee recommendations resulting from
13 the analysis must be submitted to the legislature by January
14 1, 1989.

15 (3) In devising the random sampling and analysis, the
16 water policy committee shall consult with the department of
17 natural resources and conservation and with the Montana
18 water courts.

19 (4) All claimants whose claims are randomly selected
20 for the sampling and analysis shall assist the water policy
21 committee and its consultant in reviewing claims for
22 accuracy and consistency. Assistance provided by a claimant
23 may not involve financial cost to the claimant.

24 (5) The water policy committee and its consultant may
25 enter the property of a claimant to conduct field

investigations-upon-providing-written-notice-to-the-claimant
at-least-14-days-in-advance-of-the-investigation-

(6)--information-derived-from-the-random--sampling--and
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kept--confidential--and--may--not---prejudice---the---final
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NEW SECTION. SECTION 12. REPEALER. SECTION 85-2-242,
MCA, IS REPEALED.

NEW SECTION. Section 13. Extension of authority. Any
existing authority of the judicial nomination commission and
the-board-of-natural--resources--and--conservation to make
rules on the subject of the provisions of this act is
extended to the provisions of this act.

NEW SECTION. Section 14. Codification instruction.
Section 10 is intended to be codified as an integral part of
Title 85, chapter 2, part 2, and the provisions of Title 85,
chapter 2, part 2, apply to section 10.

NEW SECTION. Section 15. Effective date. This act is
effective July 1, 1987.